

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

UNITED STATES COURT OF APPEALS

2489

United States Court of Appeals

For the District of Columbia Circuit

No. 24893

JOHN E. GILGUTH, S. A. Plaintiff

vs.

FEDERAL POWER COMMISSION, Defendant

UNITED STATES COURT OF APPEALS

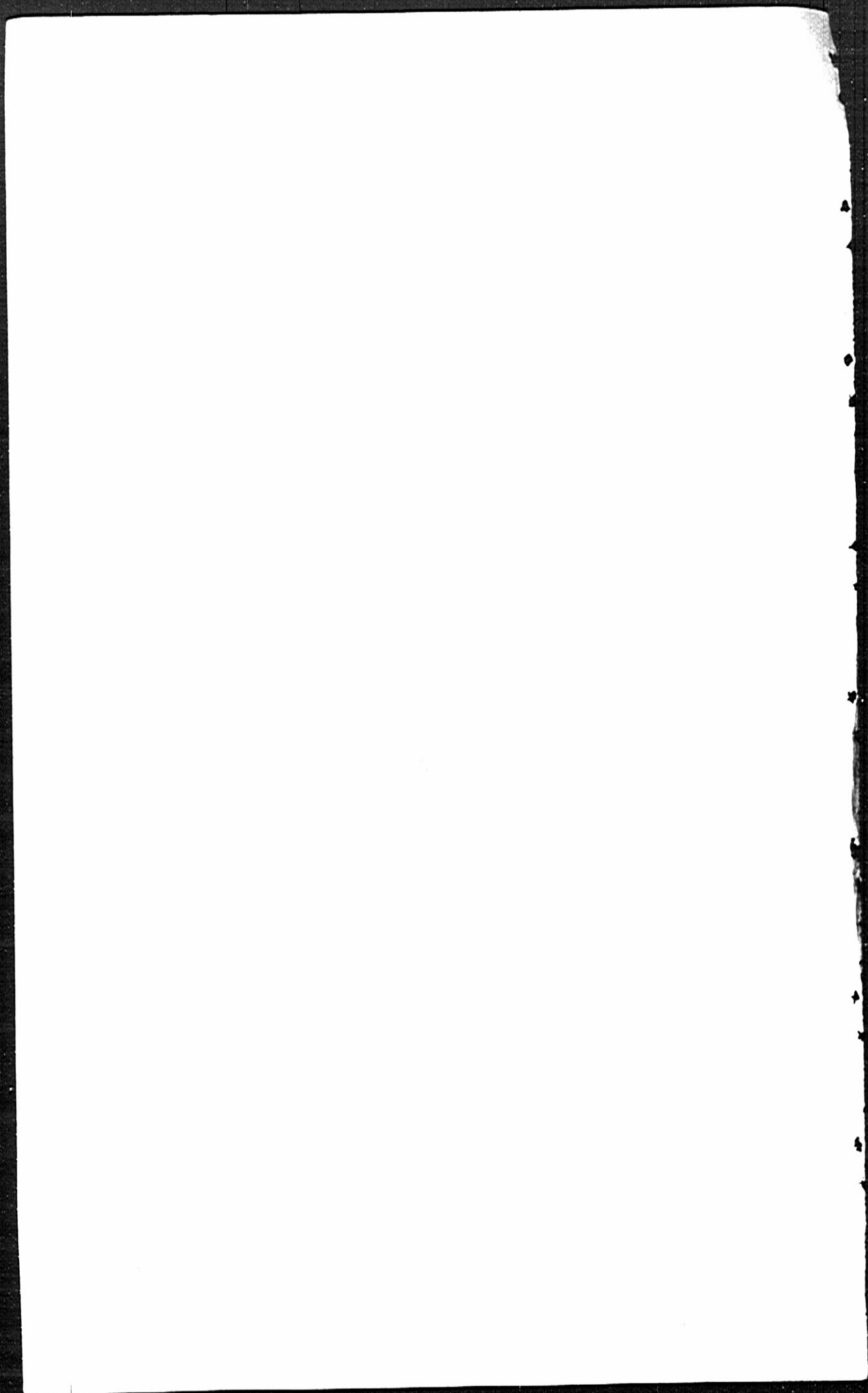
FOR THE DISTRICT OF COLUMBIA

FILED 1968

On Petition for Review of Order of

Federal Power Commission

[Signature]



INDEX TO JOINT APPENDIX

	Certified Transcript Page	Joint Appendix Page
Original Application of El Paso Natural Gas Company and El Paso Gas Transportation Corporation at Docket No. CP66-105 for Permission and Approval and A Certificate of Public Convenience and Necessity, received 10/12/65	16	2
Location of Facilities, Exhibit F, Map	80	<u>15</u>
Flow Diagram Showing Daily Design Capacity Operation without Proposed Facilities Added, Exhibit G	81	<u>16</u>
El Paso Natural Gas Company and El Paso Gas Transportation Corporation, Market Data, Exhibit I	84	19
Exhibit B	99	34
Service Agreement of 10/7/65	101	35
Letter of 9/8/64 from Mayor Vargas to Juarez Natural, English translation	112	45
Letter re the application presented by Juarez Natural, English translation	114	45
Letter of 11/3/64 from Chief Rodriguez of Dept. of Commerce & Public Works to Juarez Natural re installation of a Natural Gas distribution system by Juarez Natural, English translation	116	46

	Certified Transcript Page	Joint Appendix Page
Letter of 4/1/65 from Office of Secretary of Industry & Commerce of Mexico to Juarez Natural re application, etc., English trans- lation	120	47
Exhibit N, Page 1	128	<u>53</u>
Del Norte Natural Gas Company (Del Norte), Application for Authorization to Export Natural Gas, CP66-104, filed 10/12/65	132	55
Exhibit A-1, Certificate of Incorpora- tion of Del Norte Natural Gas Co.	141	63
Exhibit D-1, Natural Gas Contract by and between Del Norte and Juarez Natural	160	64
FPC Appendix B, Assignment of Gas Purchase Contract	184	89
Exhibit F-2, Map	185	<u>91</u>
Del Norte's Application for Presidential Permit, CP66-106, filed 10/12/65	186	93
Service Agreement of 10/7/65 be- tween El Paso Transportation and Del Norte	205	98
Lease of Natural Gas Facilities	211	104
Southern Union Gas Company's Applica- tion filed 10/18/65 for an order vacating the authorization for exportation of natural gas heretofore granted to it and for vacating of the Presidential Permit granted it for operation and mainte- nance of facilities for such gas export, G-513	230	124
Juarez Gas Company's letter filed 10/25/65, G-513, CP66-106, re South- ern's request to transfer the contract to Del Norte, who will buy from El Paso and finally sell to Juarez Gas	236	128

Index Continued

iii

	Certified Transcript Page	Joint Appendix Page
Copy of telegram sent on 10/22/65 to Commission from Juarez Gas re G-513, Southern's request to transfer the contract to Del Norte not agreeable with Juarez Gas	238	130
Letter of 10/19/65 from Southern to Juarez Gas re agreement between Southern Union and Del Norte	239	130
Letter of 10/15/65 from Southern to Commission re G-513, application of Southern Union for Commission order, etc.	240	131
Notice of Application in CP66-104, CP66- 106, CP66-105, G-513, issued 10/28/65	241	133
Petition of Juarez Gas Company, S.A., to Intervene, G-513, CP66-104, CP66- 105, CP66-106, filed 11/5/65	245	138
Del Norte Natural, CP66-106 letter to Secretary of State Dean Rusk filed 11/12/65 re Del Norte's application CP66-106 of 10/12/65	254	145
Del Norte Natural, CP66-106 letter to Secretary of Defense McNamara re Del Norte's application CP66-106 of 10/12/65, filed 11/12/65	256	147
Del Norte Natural Gas Company, CP66- 104, CP66-106, Supplement to the Application for Authorization to Export Natural Gas and to the Application for Presidential Permit, received 11/18/65	259	149
Affidavit of translator	266	154
Letter from Office of the Secretary of Industry and Commerce of Mexico to Juarez Natural Gas re the Approval of the Construction of		

	Certified Transcript Page	Joint Appendix Page
Installations for the Distribution of Natural Gas in the Zones indicated, received 11/18/65, English transla- tion	270	155
Letter of 11/16/65, re inspection of the construction system of the Juarez Natural Company, English translation	274	159
English translation of letter of 8/17/64	277	160
English translation of letter of 5/10/65	279	161
Certification of 11/17/65 showing filing of documents, English trans- lation	282	162
English translation of letter of 11/10/65	286	163
English translation of letter of 11/16/65	288	165
English translation of letter of 11/10/65	291	166
Letter from the Office of the Assistant Secretary of Defense U.S.A. to Com- mission re Del Norte's application for permit CP66-106, received 11/24/65	295	167
Letter from U.S. Department of State to Commission re Del Norte applica- tion for permit CP66-106, received 12/1/65	296	168
Letter 11/23/65 from International Boundary and Water Commission, United States and Mexico, to the Director, Office of Mexican Affairs, Department of State, Wash., D.C., re CP66-106 Del Norte's application for gas facilities crossing the international boundary	279	169

Index Continued

v

	Certified Transcript Page	Joint Appendix Page
Note received December 16, 1965, from the Mexican Ambassador to FPC in support of Juarez Gas Company's petition for hearing before the FPC in G-153, <i>et al</i>	299	173
English translation	299-A	174
Letter received December 17, 1965, from the Director of Mexican Affairs, State Department, Washington, D. C., to FPC Special Assistant to the Chairman re the Mexican Ambassador's note of the 16th	299-B	175
Letter December 29, 1965, from the FPC Special Assistant to the Chairman in response to the Director of Mexican Affairs' letter received on the 17th ..	299-C	176
Order Authorizing Exportation of Natural Gas, Terminating Authorization to Export Natural Gas and Denying Petition for Leave to Intervene, issued 12/29/65, CP66-104, G-513	300	177
Findings and Order after Statutory Hearing Issuing Certificate of Public Convenience and Necessity and Permitting and Approving Abandonment of Service, issued 12/29/65, CP66-105 ..	305	183
Permit Authorizing Del Norte Natural Gas Company, El Paso, Texas, to Operate, Maintain and Connect Natural Gas Transmission Facilities at the International Boundary between the United States and Mexico, CP66-106, issued 12/29/65	310	188
Juarez Gas Company, S.A., Motion for Stay, G-513, CP66-104, CP66-105, CP66-106, filed 1/14/66	318	194

	Certified Transcript Page	Joint Appendix Page
Application of Juarez Gas Company, S.A., for Rehearing, G-513, CP66-104, CP66- 105, CP66-106, filed 1/14/66	324	197
Appendix A	360	223
Appendix B	362	225
Appendix C	364	227
Appendix D	367	228
Appendix E	370	230
Appendix F	375	232
Appendix G	379	233
Acceptance of Order Authorizing Ex- portation of Natural Gas by Del Norte, received 1/17/66 in CP66-104, Affidavit	393	235
Del Norte's Acceptance of Permit Issued Pursuant to Executive Order No. 10485, CP66-106, filed 1/17/66, Affidavit ..	394	236
Motion of Del Norte Natural Gas Com- pany for Leave to File Supplement to Answer to Motion for Stay, and Sup- plement to Answer to Motion for Stay, G-513, CP66-104, CP66-105, CP66-106, filed 1/28/66.		
English translation of letter of 1/19/66	418-A	237
Order Denying Rehearing and Stay, issued 2/1/66, G-513, CP66-104, CP66- 105, CP66-106	419	239

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

JOINT APPENDIX

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP66-105

IN THE MATTERS OF
EL PASO NATURAL GAS COMPANY
EL PASO GAS TRANSPORTATION CORPORATION

**Original Application for Permission and Approval to
Abandon and for a Certificate of Public Convenience and
Necessity**

Come now EL PASO NATURAL GAS COMPANY and EL PASO GAS TRANSPORTATION CORPORATION, hereinafter respectively referred to as "Gas Company" and "Transportation Corporation" and collectively referred to as "Applicants," pursuant to §§ 7(b) and 7(c) of the Natural Gas Act, as amended, and § 157.5, *et seq.*, of the commission's Regulations Under the Natural Gas Act, and jointly file this Original Application, in abbreviated form in accordance with § 157.7(a) of said Regulations, for permission and approval to abandon and for certificates of public convenience and necessity, all as hereinafter more fully set forth.

In support hereof, Applicants respectfully represent:

I.

The exact legal name of Gas Company is El Paso Natural Gas Company. It is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business

17

located in El Paso, Texas. Gas Company is authorized to conduct business as a foreign corporation in the States

(17)

of Arizona, Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, Texas, Utah, Washington and Wyoming.

The exact legal name of Transportation Corporation is El Paso Gas Transportation Corporation. It is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business located in El Paso, Texas, and is a wholly-owned subsidiary of Gas Company. Transportation Corporation is authorized to conduct business as a foreign corporation in the States of New Mexico and Texas.

II.

The names, titles and mailing addresses of those persons to whom correspondence and communications concerning this application are to be addressed are as follows:

Mr. H. F. Steen, President
El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79999

Allen R. Grambling, Esquire
Hardie, Grambling, Sims & Galatzan
Post Office Drawer 1977
El Paso, Texas 79950

C. Frank Reifsnyder, Esquire
Hogan & Hartson
815 Connecticut Avenue
Washington, D. C. 20006

El Paso Natural Gas Company
700 Farragut Building
900 17th Street, N. W.
Washington, D. C. 20006

Gas Company is a natural-gas company engaged in the business of producing, purchasing, transporting and selling natural gas to distribution companies and other pipeline companies for resale and to industries and others for direct consumption. The pipeline system of Gas Company extends from the Permian Basin of west Texas and southeast New Mexico, the Texas-Oklahoma Panhandle area, the San Juan Basin of northwest New Mexico and southwest Colorado and the Four Corners area of the States of Arizona, New Mexico, Utah and Colorado, through the States of Texas, New Mexico and Arizona, to points of termination at the boundary between the States of California and Arizona near Blythe, California, and Topock, Arizona, and to a point of termination at the boundary between the States of Arizona and Nevada near Big Bend, Arizona; the pipeline system of Gas Company also extends from the San Juan Basin area, through the States of Colorado, Utah, Wyoming, Idaho, Oregon and Washington, to a point of termination at the International Boundary near Sumas, Washington.

Transportation Corporation is a natural-gas company engaged exclusively in the activity of transporting natural gas within the corporate limits of the City of El Paso, Texas, for Gas Company and for certain distributor companies and industrial consumers of Gas Company who obtain their respective requirements for natural gas from Gas Company.

IV.

Gas Company hereby seeks permission and approval under § 7(b) of the Act to abandon the sale and delivery of natural gas made by it

19

to Southern Union Gas Company ("Southern Union") for export and resale to Juarez Gas Company, S. A. ("Juarez Gas") and a certificate of public convenience and necessity under § 7(c) of the Act authorizing the sale and delivery of natural gas by it to Del Norte Natural Gas Company ("Del Norte") for export and resale to Juarez Gas and Gas Natural de Juarez, S. A. ("Juarez Natural"). Transportation Corporation hereby seeks permission and approval under said § 7(b) of the Act to abandon the transportation of natural gas made by it for the account of Southern Union which is exported and resold by Southern Union to Juarez Gas and a certificate of public convenience and necessity under said § 7(c) of the Act authorizing the construction and operation of certain facilities by it and the transportation by it, for the account of Del Norte, of such natural gas as Del Norte shall purchase and receive from Gas Company for export and resale to Juarez Gas and Juarez Natural.

Del Norte is a corporation recently organized for the purpose of providing natural gas to Ciudad Juarez, Chihuahua, Mexico, a community situated adjacent to the City of El Paso, Texas. As such, it proposes to succeed to Southern Union in the sale and delivery of natural gas to Juarez Gas, the sole distributor presently serving the community of Juarez, and to initiate the sale and delivery of natural gas to Juarez Natural, a new distributor proposing to render natural gas service in areas of Juarez not now served by Juarez Gas.

20

Applicants, Del Norte and Southern Union, have entered upon arrangements to effectuate rendition of the natural gas service proposed to the aforesaid two (2) Juarez distributors in the manner hereinafter set forth.

(20)

Service to Juarez Gas

Southern Union purchases and receives from Gas Company its entire natural gas supply utilized in its distribution activities in the metropolitan El Paso-Juarez area. This supply is, in major part, deliverable to Southern Union at the point of interconnection of the facilities of Gas Company and Transportation Corporation in southeast El Paso ("Gas Company Delivery Point"). At the Gas Company Delivery Point, Transportation Corporation receives and transports for the account of Southern Union all gas there purchased by Southern Union. Such gas is delivered to Southern Union at various points along Transportation Corporation's system in El Paso.

Gas presently consumed in the community of Juarez is purchased by Southern Union from Gas Company at the Gas Company Delivery Point, transported from such point westerly a distance of some six and five-tenths (6.5) miles by Transportation Corporation and delivered to Southern Union at a tap ("Juarez Tap") situated at the terminus of Transportation Corporation's Juarez branch line. From the Juarez Tap, Southern Union transports such gas, through its facilities, southerly a distance of some five-tenths (0.5) of a mile to the International Boundary where such gas is metered, sold and exported at two (2)

21

proximate points to Juarez Gas for resale and general distribution to consumers thereof in the community of Juarez.¹

¹ Applicants are advised by Southern Union that such exportation was authorized at Docket No. G-513, 4 FPC 826 (1945), and a presidential permit respecting the related border facilities was approved August 23, 1944.

Sale by Gas Company to Southern Union of the gas exported by Southern Union to Juarez Gas, as aforesaid, is accomplished in conformity with a Service Agreement dated May 5, 1965, at rates contained in Gas Company's Rate Schedules A-3 and B-2, FPC Gas Tariff, Original Volume No. 1, and under authority of Docket No. G-288, 4 FPC 486 (1944). Transportation of such gas by Transportation Corporation for Southern Union is accomplished in conformity with a Service Agreement dated March 29, 1963, at rates contained in Transportation Corporation's Rate Schedule T-1, FPC Gas Tariff, First Revised Volume No. 1, and under authority of Docket No. G-287, 7 FPC 886 (1948).

Succession of Del Norte to Southern Union in the rendition of natural gas service to Juarez Gas is proposed to be accomplished as follows: Del Norte and Gas Company have entered upon a Service Agreement dated October 7, 1965, providing for the sale and delivery by Gas Company and the purchase and receipt by Del Norte of natural gas for resale by Del Norte to Juarez Gas; such gas is deliverable at the Gas Company Delivery Point and, pursuant to a Service Agreement between Transportation Corporation and Del Norte also dated October 7, 1965, such gas will be received at the Gas Company Delivery Point and transported by Transportation Corporation for Del Norte's account and

22

delivered to Del Norte at the Juarez Tap. After effecting certain minor rearrangements in its facilities presently connecting the Juarez Tap with the two (2) export points to Juarez Gas to accommodate the Chamizal Settlement, Southern Union will lease all of such connecting facilities to Del Norte and such facilities will thereafter be operated by Del Norte to transport the gas, delivered to it by

(22)

Transportation Corporation at the Juarez Tap, from the Juarez Tap to the said two (2) export points where its exportation and sale to Juarez Gas will be made by Del Norte in lieu of Southern Union.

No facilities will be required on the part of Gas Company to implement the sale and delivery of gas by it to Del Norte for resale to Juarez Gas. Transportation Corporation proposes to install a measuring and regulating station adjacent to the Juarez Tap ("Del Norte No. 3 Meter Station"); otherwise, its existing facilities are adequate to conduct the proposed transportation service for Del Norte.

Sales and deliveries by Gas Company to Del Norte under their said Service Agreement of October 7, 1965, will, as with Southern Union, be made at rates contained in Gas Company's said Rate Schedules A-3 and B-2. As indicated by Exhibit I appended hereto, Del Norte estimates that the maximum daily and annual natural gas requirements of Juarez Gas to be served by it during the third full year following its succession to Southern Union will aggregate 4,935 Mcf and 388,500 Mcf, respectively. Likewise, transportation service performed by Transportation Corporation for Del Norte under their said Service Agreement of October 7, 1965, will continue to be at rates contained in Transportation Corporation's said Rate Schedule T-1. Del Norte is, therefore, succeeding

23

to Southern Union under conditions of service identical to those applied to Southern Union. Under the belief, however, that technical abandonment of service will result upon effectuation of the proposals set forth herein, Applicants seek permission and approval under said § 7(b) for the abandonment of the sale and delivery of gas now

(24)

made by Gas Company to Southern Union under the said Service Agreement of May 5, 1965, for export and resale to Juarez Gas and for the abandonment of the transportation service now conducted by Transportation Corporation for Southern Union under the said Service Agreement of March 29, 1963, respecting gas exported and resold by Southern Union to Juarez Gas.

Service to Juarez Natural

Del Norte's collateral proposal to initiate natural gas service to Juarez Natural contemplates the exportation and sale of gas to Juarez Natural at two (2) points situated on the International Boundary easterly of the Juarez Gas export points indicated above.

Under the said Gas Company-Del Norte Service Agreement of October 7, 1965, Del Norte has also obtained a supply of gas for resale to Juarez Natural and, again, this supply is deliverable at the Gas Company Delivery Point. Under the said Transportation Corporation-Del Norte Service Agreement of October 7, 1965, provision has also been made for transportation of the Juarez Natural supply by Transportation Corporation for the account of Del Norte from the Gas Company Delivery Point to two (2) points of delivery to Del Norte situated on Transportation Corporation's system, respectively, five-tenths (0.5)

24

of a mile and five (5) miles downstream of the Gas Company Delivery Point. From such points of delivery by Transportation Corporation to Del Norte, Southern Union will construct facilities extending to the two (2) export points to Juarez Natural and such facilities will be leased to and operated by Del Norte for the purpose of transporting to and exporting and selling such gas to Juarez Natural at such export points.

(24)

No facilities will be required on the part of Gas Company to implement the sale and delivery of gas by it to Del Norte for resale to Juarez Natural. Transportation Corporation proposes to install a measuring and regulating station ("Del Norte No. 1 and Del Norte No. 2 Meter Stations") at each of the points of delivery by it to Del Norte; otherwise, its existing facilities are adequate to conduct the proposed transportation service for Del Norte.

As indicated by Exhibit I appended hereto, Del Norte estimates that the maximum daily and annual natural gas requirements of Juarez Natural to be served by it during the third full year of service will aggregate 21,084 Mcf and 3,036,138 Mcf, respectively.

Public Convenience and Necessity

The proposals hereinabove set forth are designed to provide increased natural gas supplies to the Juarez area and, thus, permit greater development of such area which heretofore has only partially been served with natural gas. Applicants therefore believe that grant of the authorizations requested herein, enabling increased availability of natural gas to this area with its attendant benefits, is required by

25

and will clearly serve the present and future public convenience and necessity.

V.

As stated, Gas Company does not propose to construct and operate any facilities and, therefore, neither requests herein nor requires facility authorization.

The facilities for which Transportation Corporation seeks a certificate authorizing their construction and operation are specifically described as follows:

A. Del Norte No. 1 Meter Station

A dual 8 $\frac{5}{8}$ " O.D. orifice-type measuring and regulating station to be situated adjacent to Transportation Corporation's 16" O.D. City Main Line in Tract 16, Block 21, Ysleta Grant, El Paso County, Texas;

B. Del Norte No. 2 Meter Station

A dual 4 $\frac{1}{2}$ " O.D. orifice-type measuring and regulating station to be situated adjacent to Transportation Corporation's 16" O.D. City Main Line in the vicinity of Dallas and San Antonio Streets, City of El Paso, Texas; and

C. Del Norte No. 3 Meter Station

A dual 6 $\frac{5}{8}$ " O.D. orifice-type measuring and regulating station to be situated at the terminus of Transportation Corporation's 10 $\frac{3}{4}$ " O.D. and 8 $\frac{5}{8}$ " O.D. Juarez Branch Line in the alley adjacent to Third Street between Chihuahua and Santa Fe Streets, City of El Paso, Texas.

The total estimated cost of the above described facilities in \$32,100, details of which are submitted herewith as Exhibit K.

26

The total estimated cost of the facilities proposed to be constructed by Southern Union and leased to Del Norte is \$71,990, details of which are submitted herewith in Section 1 of Exhibit I.

(26)

The total estimated cost of the facilities to be installed by Juarez Natural and provide service during the third full year of operation is \$2,570,500, details of which are submitted herewith in Section 1 of Exhibit I.

It is not anticipated at this time that Juarez Gas will make any substantial distribution extensions.

Transportation Corporation proposes to commence and thereafter complete construction of its proposed facilities immediately upon receipt of requisite Commission authorization therefor. Following completion of such construction, Applicants propose to commence their respective services set forth herein as soon as practicable.

VI.

Applicants are informed and believe and therefore state that Del Norte has filed or forthwith will file applications for authorizations necessary on its part to implement the proposals set forth herein. Applicants are further informed and believe and therefore state that Southern Union has filed or forthwith will file such applications as are necessary to vacate the authorization at Docket No. G-553, 4 FPC 826 (1945), and related presidential permit approved August 23, 1944, respecting the exportation of natural gas by it to Juarez Gas to which Del Norte proposes to succeed. Applicants therefore further state that, other than the foregoing and other than the filing of necessary

27

service agreements pursuant to Part 154 of the Commission's Regulations, no application or filing, to supplement or effectuate Applicants' proposals, as set forth herein, must be or is to be filed by Applicants, or by any other person, with any Federal, State or other regulatory body.

VII.

Inasmuch as the undertaking contemplated by this application does not require all of the data and information specified by § 157.5, *et seq.*, of the Commission's Regulations to fully disclose the nature and extent thereof, this application is being filed in abbreviated form in accordance with § 157.7(a) of said Regulations. Reference is made below to all exhibits, supporting data and information required by and applicable under §§ 157.14 and 157.18 of said Regulations which are being filed herewith, incorporated herein by reference or omitted for the reasons indicated.

• • • • •

29

EXHIBIT H—TOTAL GAS SUPPLY DATA

Inasmuch as the instant application does not involve service on the part of Gas Company to major new markets or major existing markets from new sources of gas supply over new routes, the information and data required by this exhibit are, as to Gas Company, omitted herefrom. Should information respecting Gas Company's total system gas supply be deemed applicable herein, Gas Company requests the incorporation by reference of its 1964 FPC Form No. 15.

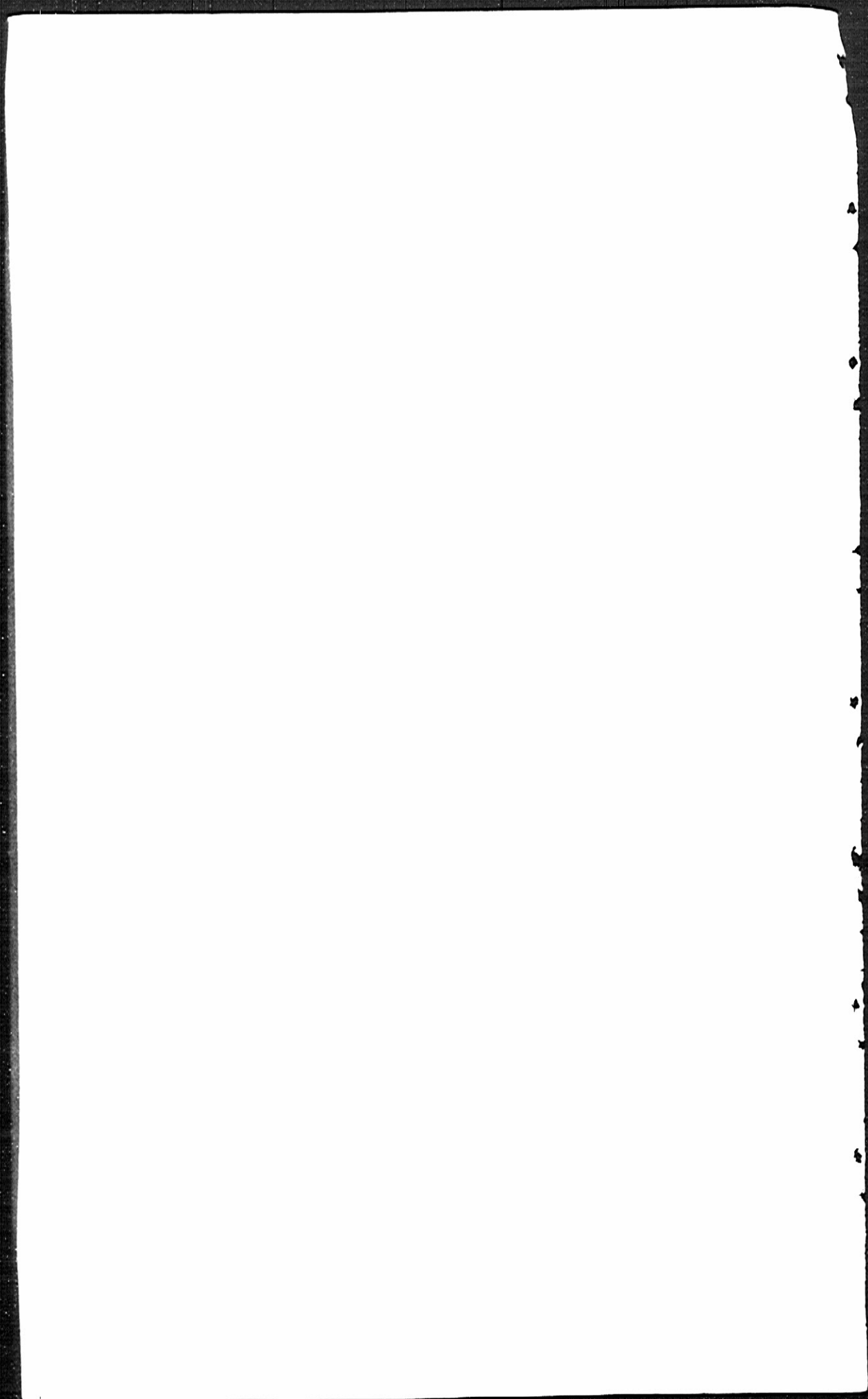
Inasmuch as Transportation Corporation is engaged exclusively in the transportation of gas for the account of others, and does not control, possess or have committed to it any gas supply, this exhibit, is, as to Transportation Corporation, also omitted herefrom.

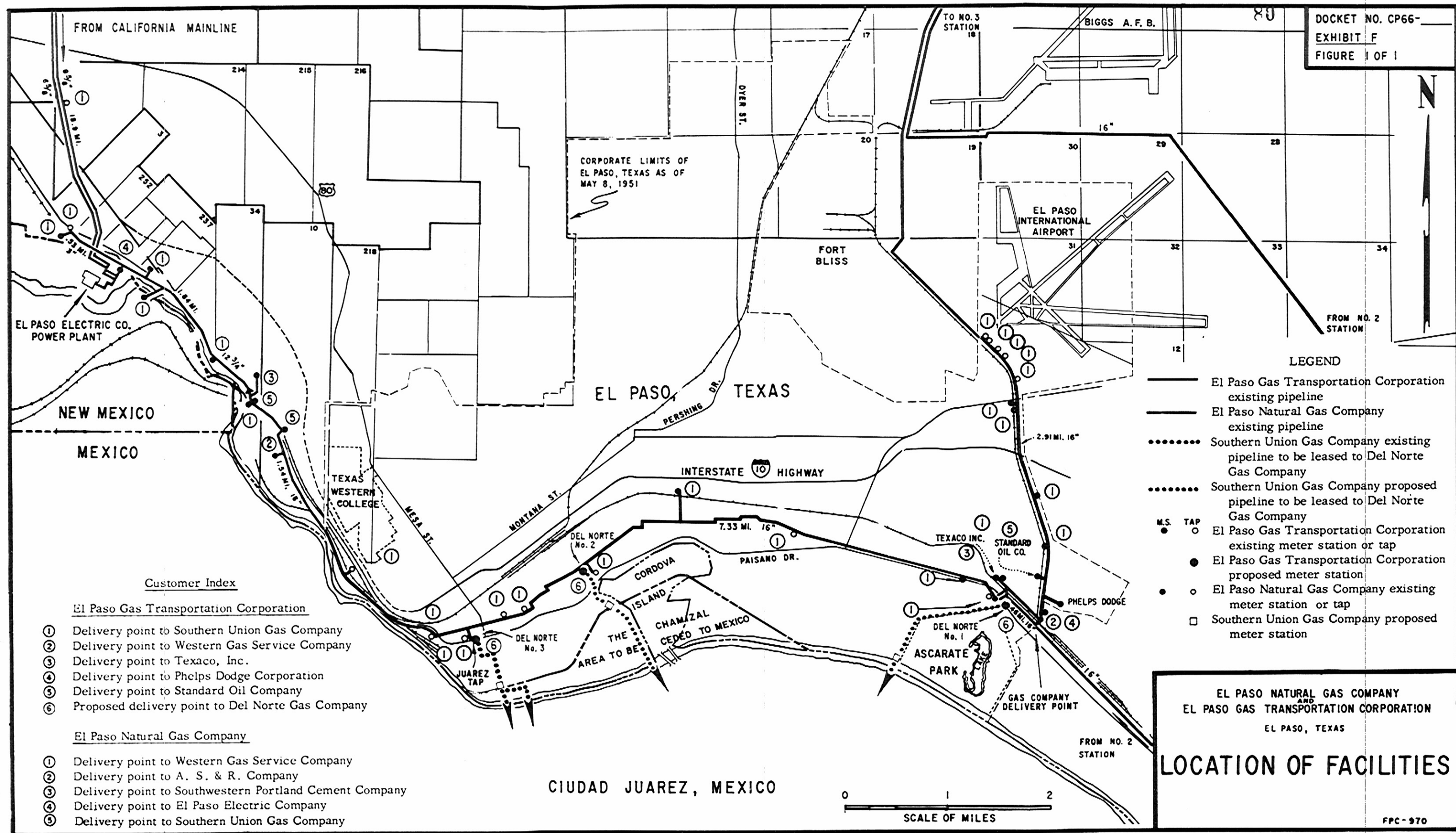
• • • • •

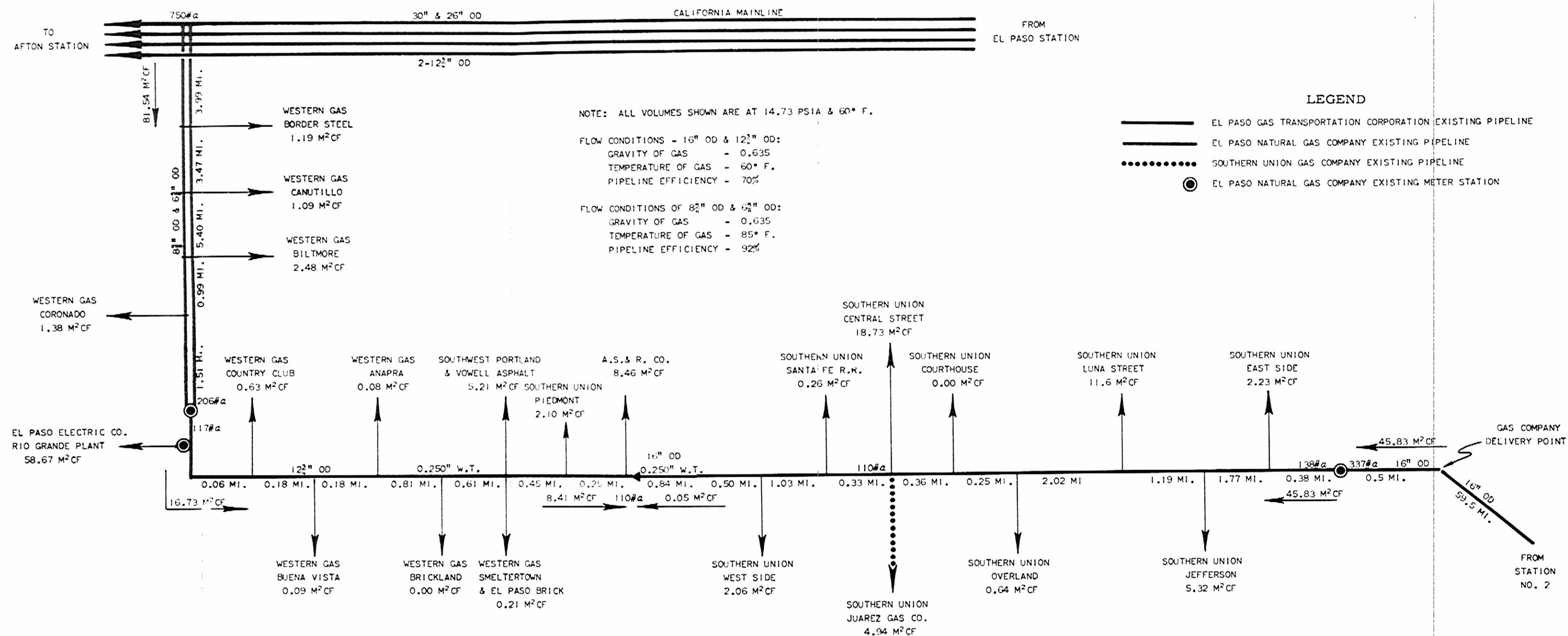
EXHIBIT P—TARIFF

Sale and delivery of natural gas by Gas Company to Del Norte, as proposed herein, will be made in accordance with and at rates contained in Gas Company's Rate Schedules A-3 and B-2, FPC Gas Tariff, Original Volume No. 1. Transportation of natural gas by Transportation Corporation for the account of Del Norte, as proposed herein, will be made in accordance with and at rates contained in Transportation Corporation's Rate Schedule T-1, FPC Gas Tariff, First Revised Volume No. 1. No changes will be required in either of Applicants' FPC Gas Tariffs to implement the instant proposal, except revision in the availability portions of the above rate schedules necessary to reflect their applicability to Del Norte, as demonstrated on the pro forma tariff sheets submitted herewith as Exhibit P, and no material change in Applicants' average costs of service will result upon effectuation thereof. Accordingly, the other information and data required for this exhibit are omitted herefrom.

• • • • •



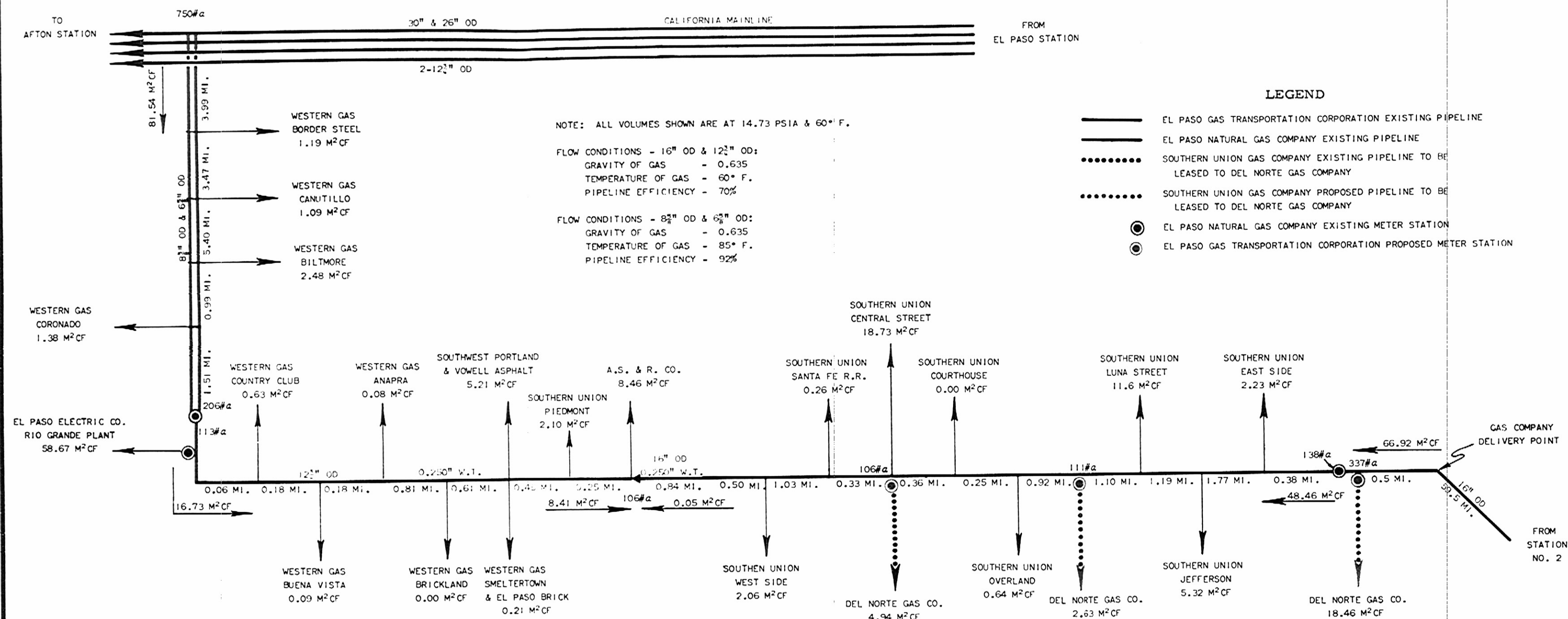




EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION
EL PASO, TEXAS

FLOW DIAGRAM SHOWING
DAILY DESIGN CAPACITY OPERATION
WITHOUT PROPOSED FACILITIES ADDED

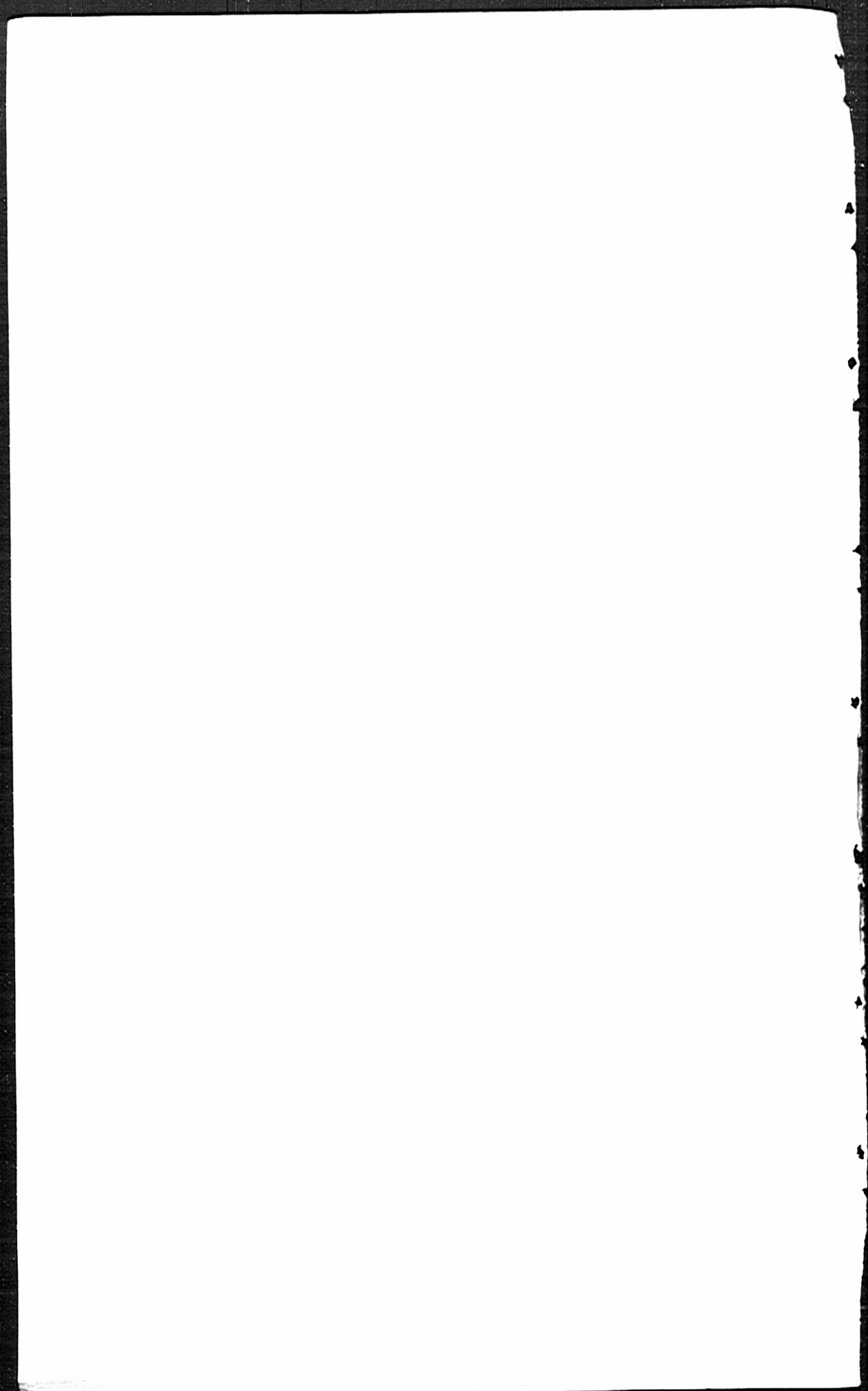
FPC-971



EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION
EL PASO, TEXAS

FLOW DIAGRAM SHOWING
DAILY DESIGN CAPACITY OPERATION
WITH PROPOSED FACILITIES ADDED

FPC-972



84

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION
Market Data

Table of Contents

<i>Description</i>	<i>Page Number</i>
<i>Section No. 1</i>	
Summary of Estimated Average Number of Natural Gas Consumers of Juarez Natural and Estimated Peak Day and Annual Natural Gas Requirements of Juarez Natural and Juarez Gas for the First Three Full Years of Operation of the Proposed Facilities	1
Explanation of Basic Factors Used in Estimating Future Natural Gas Requirements	2 & 3
Estimated Cost of All Facilities Proposed to be Constructed Other Than Those Covered by This Application	4
Estimated Expenses and Revenues of Del Norte	5
<i>Section No. 2</i>	
Service Agreements by and between Del Norte and Applicants dated October 7, 1965
<i>Section No. 3</i>	
Market Survey Relating to Consumers Proposed to be Served by Juarez Natural
<i>Section No. 4</i>	
Statement Respecting Franchise Rights of Juarez Natural	1

85

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION
Market Data

(85)

Summary of Estimated Average Number of
Natural Gas Consumers of Juarez Natural and
Estimated Peak Day and Annual Natural Gas
Requirements of Juarez Natural and Juarez Gas
For the First Three Full Years of Operation
of the Proposed Facilities
(Volumes in Mcf at 14.73 psia)

	<i>First Three Full Years</i>		
	<i>1966</i>	<i>1967</i>	<i>1968</i>
<i>Juarez Natural</i>			
<i>No. of Consumers</i>			
Residential	8,433	9,640	11,145
Commercial	1,077	1,237	1,453
Firm Industrial ¹	6	7	8
Total	9,516	10,884	12,606
<i>Peak Day Requirements</i>			
Residential (Includes Lost and Unaccounted For)	8,047	9,233	10,708
Commercial	2,613	4,212	5,772
Firm Industrial	4,570	4,592	4,604
Total	15,230	18,037	21,084
<i>Annual Requirements</i>			
Residential (Includes Lost and Unaccounted For)	668,753	758,768	877,928
Commercial	203,700	330,260	477,910
Firm Industrial	1,670,700	1,676,000	1,680,300
Total	2,543,153	2,765,028	3,036,138
<i>Juarez Gas</i>			
<i>Peak Day Requirements</i>	4,684	4,819	4,935
<i>Annual Requirements</i>	367,500	378,000	388,500

¹ *Name of Industrial Consumer**End Use of Gas*

Comision Federal de Electricidad (Power Plant)	Power Generation
Fabrica de Aceite de Algodon (Cottonseed Oil Mill)	Boiler Fuel
Cia. Industrial Cruz Blanca (Brewery)	Boiler Fuel
Distilleria D. & W., S.A. (Distillery)	Boiler Fuel
Distilleria D.M., S.A. (Distillery)	Boiler Fuel
Pronaf (Government Bldg. Complex)	Htg. & Air Cond.

NOTE: It is anticipated that deliveries of natural gas to Del Norte will commence on or about January 1, 1966. Therefore, data pertaining to the construction year is believed to be inapplicable.

86

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Explanation of Basic Factors Used in
Estimating Future Natural Gas Requirements

Applicant is advised that the estimates of the natural gas requirements of Juarez Natural set forth herein were based upon the following:

- A. Questionnaires were taken to all potential customers in the zones to be serviced. Forms were completed by training personnel to determine pertinent information including the following:
1. List of all fuel burning equipment indicating capacities.
 2. Size and general construction of buildings to be heated.
 3. Customer's statement of amounts of fuel burned per month during the winter and summer of last year.
 4. Customer's statement of plans regarding the purchase of natural gas.

(86)

5. Indication of desired point of service connection and meter setting.
- B. Potential customers were invited to submit "Application for Natural Gas Service" forms and to make the appropriate deposits for installation of the service connection to their homes or places of business.
- C. Potential industrial customers were visited and feasibility studies were completed to establish the justification for conversion to natural gas.
- D. Information summarized from these questionnaires and interviews were evaluated to determine the expected average consumption for each type of customer.
- E. The zones to be serviced by the proposed distribution system are located adjacent to another similar zone in the same city in which natural gas is presently being distributed. Records of the average volumes of natural gas sold to residential and commercial customers in this adjacent zone during four previous years were examined and compared to the figures developed above.

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Explanation of Basic Factors Used in
Estimating Future Natural Gas Requirements

On the basis of the foregoing information, coupled with weather information, the following factors were established:

Degree days per year = 2,500.

Average maximum house load = 70 cubic feet per hour.

Average yearly total consumption = 70,000 cubic feet.

General domestic use rate = 30,000 cubic feet per year.

Heating load = 21 cubic feet per degree day per customer.

Load factor = 76%.

Peak day = $7 \times$ minimum day.

Peak hour = 6% of peak day.

Minimum hour on peak day = 2% of peak day.

Loads for industrial customers were established by direct evaluation of the capacities and requirements of existing fuel burning equipment on the basis of equivalent heating values of the fuels.

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Estimated Cost of All Facilities Proposed to be
Constructed Other Than Those Covered
by This Application

	<i>Const. Year First Three Full Years</i>			
	<i>1965</i>	<i>1966</i>	<i>1967</i>	<i>1968</i>
<i>To Be Constructed by Juarez Natural</i>				
Mainline Piping	\$ 97,900	\$184,000	\$ 15,000	\$ 10,000
Distribution System	180,220	301,000	150,000	144,000
Crossings, River, Highway	8,200	4,800	3,000
Land, Buildings, Equipment	193,000	10,000	12,000	8,000
Valves & Fittings	25,680	16,400	11,800	6,000
Service Connections, Meters	164,200	291,000	72,000	66,100
Controls, Instrumentation	53,850	15,000	12,000	5,400
Engineering, Overhead, Miscellaneous	87,200	79,000	32,500	26,000
Contingency, Working Capital	133,750	80,000	30,000	41,500
Total	\$944,000	\$981,200	\$338,300	\$307,000
<i>To Be Constructed By Southern Union and Leased to Del Norte</i>				
<i>From Del Norte Delivery Point No. 1</i>				
5,210' of 12" Transmission Line and a Measuring and Regulating Station	\$ 34,050	\$	\$	\$
<i>From Del Norte Delivery Point No. 2</i>				
7,000' of 6" Transmission Line and a Measuring and Regulating Station	\$ 30,915	\$	\$	\$
<i>From Del Norte Delivery Point No. 3</i>				
An Addition to Existing Facilities Consisting of 500' of 6" and 1800' of 4" Transmission Line	\$ 7,025	\$	\$	\$
Total	\$ 71,990	\$	\$	\$

89

EL PASO NATURAL GAS COMPANY

AND

EL PASO GAS TRANSPORTATION CORPORATION

Estimated Revenues and Expenses of *Del Norte* for the
First Three Full Years of Operation of the
Proposed Facilities

	<i>First Three Full Years</i>		
	1966	1967	1968
<i>Revenues</i>	\$1,148,185	\$1,253,250	\$1,378,780
<i>Expenses</i>			
Cost of Gas Sold	\$ 892,071	963,266	1,049,602
Cost of Facilities Leased	93,712	113,254	128,397
Other Costs	80,420	85,650	85,700
Total	\$1,066,203	\$1,162,170	\$1,263,699

SERVICE AGREEMENT

dated

October 7, 1965

between

EL PASO NATURAL GAS COMPANY, "*Seller*"

AND

DEL NORTE NATURAL GAS COMPANY, "*Buyer*"

Providing for the sale and delivery of natural gas for
transportation, export and resale to
Gas Natural de Juarez, S. A. and Juarez Gas
Company, S.A., for resale and distribution in
Ciudad Juarez, Chihuahua, Mexico, and environs

91

Service Agreement

THIS AGREEMENT, dated the 7th day of October, 1965, made and entered into by and between EL PASO NATURAL GAS COMPANY, a Delaware corporation (herein called "Seller") and DEL NORTE NATURAL GAS COMPANY, a Texas corporation (herein called "Buyer");

WHEREAS, Seller owns and operates a natural gas transmission system and is engaged in the production, purchase, transportation and sale at wholesale of natural gas, and

WHEREAS, Buyer proposes to lease and operate a natural gas transmission system and related facilities and to obtain natural gas from Seller for transportation, export and resale to GAS NATURAL DE JUAREZ, S. A. and JUAREZ GAS COMPANY, S. A. (herein collectively called "Distributors") for resale and general distribution to consumers thereof situated in Ciudad Juarez, Chihuahua, Mexico, and environs, and

WHEREAS, Buyer and Seller are desirous of entering into this Service Agreement for the sale and delivery by Seller and the purchase and receipt by Buyer of natural gas for transportation, export and resale to Distributors for resale and general distribution to consumers thereof situated in Ciudad Juarez, Chihuahua, Mexico, and environs, all as hereinafter provided;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the parties hereto, in consideration of the covenants and payments herein set forth, have mutually covenanted and agreed and do mutually covenant and agree as follows:

ARTICLE I

Gas to be Purchased and Sold

Section 1. Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, upon the terms and subject to the conditions hereinafter set forth, the following volumes of natural gas (and/or the volumes of natural gas shown on Exhibit B attached hereto):

Natural gas sufficient to supply the requirements of Distributors for resale to residential and non-residential consumers served by Distributors, including all gas lost and unaccounted for by Distributors or Buyer, all within that area but subject to those quantities shown on Exhibit B hereto.

Section 2. (Not Applicable)

ARTICLE II

Points of Delivery and

Assumed Atmospheric Pressure

The points of delivery of natural gas deliverable hereunder shall be on the outlet side of the measuring station of the Seller, at or near each of the points shown on Exhibit C attached, and the assumed atmospheric pressure at each point shall be that which is designated on said Exhibit C. It is understood that additional points of delivery may be mutually agreed upon by the parties hereto, which will be included in a revised Exhibit C.

ARTICLE III

Delivery Pressure

Deliveries of natural gas hereunder shall be at gauge pressure specified either below or in Exhibit C attached hereto:

(Shown on Exhibit C)

93

ARTICLE IV

Supplies of Gas

Seller proposes to obtain the major part of the natural gas for delivery hereunder by purchase under contracts which it now holds and/or from gas leases which it now owns or controls, and shall not be required to supply natural gas from any other sources, but Seller shall have the right, if it so elects, to supply additional natural gas from other sources provided such other natural gas meets the B.t.u. and other quality provisions in the General Terms and Conditions of Seller's FPC Gas Tariff on file with the Federal Power Commission.

ARTICLE V

Prices and Rate Schedules

Buyer shall pay Seller for natural gas purchased and for services rendered hereunder in accordance with Seller's Rate Schedules A-3 and B-2 on file with and subject to the jurisdiction of the Federal Power Commission and lawfully in effect from time to time; provided, however, that fifty-five percent (55%) thereof shall be deemed to be delivered for residential service and purchased under Seller's Rate Schedule A-3 and forty-five percent (45%) thereof shall be deemed to be delivered

(93)

for nonresidential service and purchased under Seller's Rate Schedule B-2. The rates contained in such Rate Schedules on file with said Commission and in effect at the time of commencement of service hereunder shall be the initial rates to be paid by Buyer to Seller under this Agreement and shall continue until the same are changed in accordance with lawful requirements. It is agreed that Seller shall have the right to make and to file with the Federal Power

94

Commission in accordance with Section 4 of the Natural Gas Act, changes in these rates and new rates or rate schedules; provided, however, Buyer shall have the right to protest any such changes in rates and new rates or rate schedules before said Commission, and to exercise any other rights it may have with respect thereto under the Natural Gas Act, as amended, or as it may be amended, including Section 5 of such Act.

This Agreement in all respects is subject to the provisions of Rate Schedules A-3 and B-2 and applicable provisions of the General Terms and Conditions attached to the rate schedules filed by Seller with the Federal Power Commission, all of which are by reference made a part hereof.

ARTICLE VI

Term

This Agreement shall continue in full force and effect from the date so designated by the Federal Power Commission as the effective date hereof for a primary term extending to and including December 31, 1980, and, thereafter, from year to year, subject, however, to termination by either party hereto upon expiration of said primary

term or upon any subsequent anniversary thereof by written notice given no less than twelve (12) months in advance by either party to the other so stating. This Agreement must be filed with the Federal Power Commission, pursuant to the Natural Gas Act, and accordingly cannot become fully effective until the same takes effect pursuant to said Natural Gas Act.

ARTICLE VII

Governmental Authorization

When certificates of public convenience and necessity or other governmental authorizations are necessary for the construction or operation

95

of the facilities above mentioned, or to render or accept the gas service provided for herein, each party shall notify the other within two weeks from the date of issuance of such authorizations as to whether or not such authorizations are in substance satisfactory to it. If the Federal Power Commission shall not have, prior to March 1, 1966, issued to Seller such authorizations in substance satisfactory to Seller, either Buyer or Seller may terminate this Agreement without further liability of either party to the other; provided, however, that such right of termination (if not previously exercised) shall cease when the party seeking such authorization shall notify the other that such authorization has been received and is in substance satisfactory to it.

ARTICLE VIII

Cancellation of Prior Contracts

This Agreement supersedes and cancels as of the effective date hereof the following contracts between the

(95)

parties hereto for the sale of natural gas by the Seller to the Buyer:

None

ARTICLE IX

Notices

Except as herein otherwise provided, any notice, request, demand, statement or bill provided for in this Agreement, or any notice which either party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by registered mail to the Post Office address of the parties hereto, as the case may be, as follows:

Seller—El Paso Natural Gas Company
Post Office Box 1492
El Paso, Texas 79999

96

Buyer—Del Norte Natural Gas Company
1026 Southwest Center
El Paso, Texas 79901

or to such other address as either party shall designate by formal written notice. Routine communications, including monthly statements and payments, shall be considered as duly delivered when mailed by either registered or ordinary mail.

ARTICLE X

Transfer and Assignment

Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Seller or of Buyer, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title hereunder. Either

Buyer or Seller may, without relieving itself of its obligations hereunder, assign any of its rights hereunder to a company with which it is affiliated, but otherwise no assignment of this Service Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the consent thereto of Seller, in the event of any assignment by Buyer, or consent thereto of Buyer, in the event of an assignment by Seller. Either party may assign its right, title and interest in and to and under this Service Agreement to a trustee or trustees, individual or corporate, as security for bonds or other obligations or securities without the necessity of obtaining such consent and without such trustee or trustees assuming or becoming in any respect obligated to perform the obligations of the assignor hereunder and, if any such trustee be a corporation, without its being required to qualify to do business in any state in which any performance of this Service Agreement may occur.

97

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed in several counterparts by their respective officers thereunto duly authorized, all as of the day and year first above written.

EL PASO NATURAL GAS COMPANY

Attest:

By: s/ H. F. Steen, President

s/ John B. Megahan, Assistant Secretary
DEL NORTE NATURAL GAS COMPANY

Attest:

By: s/ John L. Harlan, President

s/ Henry W. Simon, Secretary

• • • • •

EXHIBIT B TO SERVICE AGREEMENT

Contracted Volumes of Natural Gas

Seller's obligation to sell and deliver natural gas is limited as provided in Section 11 of the General Terms and Conditions of Seller's FPC Gas Tariff on file with the Federal Power Commission, and Seller shall not in any event be obligated to supply natural gas to Buyer in excess of the volumes specified below for the respective areas designated:

<i>Location or Area</i>	<i>Maximum Deliveries</i>
-----------------------------	-------------------------------

Ciudad Juarez, Chihuahua,
Mexico, and environs

For resale to:

Juarez Gas Company, S. A. 4,900 Mcf/day

Gas Natural de Juarez, S. A. 15,000 Mcf/day

Effective date: When made effective by the Federal
Power Commission

Supersedes Exhibit B Effective: This is an initial
Exhibit B

DEL NORTE NATURAL GAS COMPANY, (*Buyer*)

By: s/ John L. Harlan, President

Date:

EL PASO NATURAL GAS COMPANY, (*Seller*)

By: s/ H. F. Steen, President

Date:

• • • • •

SERVICE AGREEMENT

dated

October 7, 1965

between

EL PASO NATURAL GAS COMPANY, "*Seller*"

AND

DEL NORTE NATURAL GAS COMPANY, "*Buyer*"

Providing for receipt, transportation and
delivery of natural gas in El Paso, Texas

Service Agreement

This agreement, made and entered into this 7th day of October, 1965, by and between EL PASO GAS TRANSPORTATION CORPORATION, a Delaware corporation (herein called "Seller") and DEL NORTE NATURAL GAS COMPANY, a Texas corporation (herein called "Buyer");

WHEREAS, Seller owns and operates a natural gas transmission system and is engaged in the transportation of natural gas within and adjacent to the City of El Paso, Texas, and

WHEREAS, Buyer proposes to lease and operate a natural gas transmission system and related facilities for the transportation, export and sale of natural gas to GAS NATURAL DE JUAREZ, S. A. and JUAREZ GAS COMPANY, S. A. (herein collectively called "Distributors") for resale and general distribution to consumers thereof situated in Ciudad Juarez, Chihuahua, Mexico, and environs, and

WHEREAS, under that certain Service Agreement of even date herewith by and between Buyer and El Paso Natural Gas Company (herein called "El Paso"), Buyer has obtained a supply of natural gas from El Paso for transportation, export and sale to Distributors, which supply is deliverable to Buyer at a point distant from but connected with Buyer's said transmission system by Seller's said transmission system, and

WHEREAS, Buyer and Seller desire to arrange for the transportation by Seller for the account of Buyer of Buyer's said natural gas supply obtainable from El Paso, as hereinafter set forth:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that the parties hereto, in consideration of the covenants and payments herein set forth,

103

have mutually covenanted and agreed and do mutually covenant and agree as follows:

ARTICLE I

Gas to be Transported and Delivered

Seller agrees to receive for account of Buyer and to transport and deliver to the Buyer at the points of delivery, designed in Article II hereof, along the pipeline system of the Seller, and Buyer agrees to deliver or cause to be delivered to the Seller and to withdraw from the pipeline system of the Seller under the terms and subject to the conditions herein set forth, the following quantities of natural gas:

Such quantities of natural gas as Buyer may purchase and receive from El Paso under the said Service Agreement of even date herewith by and between Buyer and El Paso, receipt by Seller of such quantities to be made at the pressure and at the delivery point designated therein; provided, however, that Seller shall not be required to deliver to Buyer and Buyer shall not be entitled to receive from Seller natural gas in excess of those quantities set forth below at the points of delivery indicated and more particularly described in Article II below:

Del Norte No. 1: 12,400 Mcf
Del Norte No. 2: 2,600 Mcf
Del Norte No. 3: 4,900 Mcf

(103)

ARTICLE II

Points of Delivery and Assumed Atmospheric Pressure

The points of delivery of natural gas deliverable hereunder shall be on the outlet side of the measuring station of the Seller, at or near the following points, and the assumed atmospheric pressure at each such point shall be.

104

<i>Location</i>	<i>Assumed Atmospheric Pressures</i>
1. Del Norte No. 1—Located in Tract 16, Block 21, Ysleta Grant, El Paso County, Texas	12.8
2. Del Norte No. 2—Located on the El Paso Gas Transportation Corporation City Main Line, in the vicinity of Dallas and San Antonio Streets, City of El Paso, Texas	12.8
3. Del Norte No. 3—Located at the end of the 10¾" and 8⅝" Branch Line which is 844.5 feet south of Engineering Station 1218 + 88 on the El Paso Gas Transportation Corporation City Main Line, in the alley adjacent to Third Street between Chihuahua and Santa Fe Streets, City of El Paso, Texas	12.8

It is understood that, by mutual consent of the parties hereto, other and/or additional points of delivery may be agreed upon.

ARTICLE III

Delivery Pressure

Deliveries of natural gas hereunder shall be at gauge pressures at the points of delivery as may there exist from time to time but not less than two hundred fifty pounds per square inch at the Del Norte No. 1 delivery point and not less than eight-five pounds per square inch at the Del Norte No. 2 and Del Norte No. 3 delivery points.

105

ARTICLE IV

Prices and Rate Schedules

Buyer shall pay Seller for the transportation of natural gas and for services rendered hereunder in accordance with Seller's Rate Schedule T-1 on file with and subject to the jurisdiction of the Federal Power Commission and lawfully in effect from time to time. The aforesaid rate, now on file with said Commission, shall be the rate to be paid by Buyer to Seller under this agreement until same is changed in accordance with lawful requirements. This agreement in all respects is subject to the provisions of the applicable General Terms and Conditions attached to the rate schedule filed with the Federal Power Commission, all of which are by reference made a part hereof.

ARTICLE V

Term

This agreement shall continue in full force and effect from and after its effective date as designated by the Federal Power Commission until December 31, 1980, and thereafter, from year to year, subject, however, to termination by either party hereto upon expiration of said term or upon any subsequent anniversary thereof by

(105)

written notice given no less than twelve (12) months in advance by either party to the other so stating. This agreement must be filed with the Federal Power Commission, pursuant to the Natural Gas Act, and accordingly cannot become fully effective until the same takes effect pursuant to said Natural Gas Act.

106

ARTICLE VI

Cancellation of Prior Contracts

This agreement supersedes and cancels as of the effective date hereof the following contracts between the parties hereto:

None.

There shall be exempted from the foregoing all indebtedness incurred by either party to the other under the terms of any such agreement executed prior to the effective date hereof.

ARTICLE VII

Notices

Notices to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to Seller at El Paso, Texas, or to the Buyer at 1026 Southwest Center, El Paso, Texas, 79901, as the case may be, or to such other address as either party shall respectively hereafter designate in writing.

ARTICLE VIII

Successors and Assigns

The terms, provisions, conditions and requirements of the FPC Gas Tariff and executed Service Agreement

(107)

shall extend, inure to and bind the respective successors and assigns of the parties hereto.

ARTICLE IX

Interpretation

The interpretation and performance of this agreement shall be in accordance with the laws of the State of Texas.

107

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly signed in several counterparts by their respective officers, the day and year first above written.

EL PASO GAS TRANSPORTATION CORPORATION

By: s/ H. F. Steen, Vice President

Attest:

s/ A. C. Martch, Assistant Secretary

DEL NORTE NATURAL GAS COMPANY

By: s/ John L. Harlan, President

Attest:

s/ Henry W. Simon, Secretary

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Market Survey

Economic studies relative to the demand for natural gas in the area of the proposed distribution system of Juarez Natural have been made as follows:

- A. The locations of all potential consumers of natural gas were marked on zone maps by reference to existing utility service connections.
- B. Map locations were checked for verification and recording of additional consumer information.
- C. Residential and commercial customers were interviewed to determine their expected natural gas requirements as predicted from fuel consumption records.
- D. The homes and places of business in the area of the proposed system are presently heated exclusively by liquid petroleum gas. Because of unusually high electricity rates, water heating and cooking is presently done almost entirely with propane-butane fuel. Accordingly, records of bottled gas sales were found to be useful for verifying typical consumption rates reported by customers.
- E. Requirements and expected demand from potential industrial customers were determined by individual analysis of facilities and needs.
- F. On the basis of existing customer applications for service, it was assumed that 65 percent of the poten-

tial residential and small commercial customers would be connected during the construction year and an additional 10 percent would be connected each year during the following three years.

- G. Operating costs were based on average typical costs obtained from other existing similar systems put on a current basis and adjusted to meet the specific conditions of the proposed project.

Tabulated consumption information was analyzed and adjusted according to the most accurate information available and summarized as follows:

109

EL PASO NATURAL GAS COMPANY

AND

EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Market Survey

	<i>1st Year</i>	<i>2nd Year</i>	<i>3rd Year</i>
	<i>1966</i>	<i>1967</i>	<i>1968</i>
Residential			
Customers	8,433	9,640	11,145
Avg. Consumption,			
Mcf/yr.	64.941	65.052	65.80
Total Consumption,			
Mcf/yr.	547,650	627,100	733,350
Avg. Price, ¢/Mcf	109.7	109.7	109.7
Gross Revenue, \$/yr.	600,772	687,929	804,485
Commercial Customers	1,077	1,237	1,453
Avg. Consumption,			
Mcf/yr.	189.13	266.98	328.98
Total Consumption,			
Mcf/yr.	203,700	330,260	478,010

(109)

	<i>1st Year</i>	<i>2nd Year</i>	<i>3rd Year</i>
	<i>1966</i>	<i>1967</i>	<i>1968</i>
Average Price, ¢/Mcf	89.3	86.5	83.5
Gross Revenue, \$/yr.	181,940	285,830	399,050
Industrial Customers	6	7	8
Total Consumption,			
Mcf/yr.	1,670,700	1,676,000	1,680,300
Average Price, ¢/Mcf.	39.5	39.5	39.5
Gross Revenue, \$/yr.	659,926	662,020	663,718
TOTAL GROSS REVENUE,			
\$/yr.	1,442,638	1,635,779	1,867,253
TOTAL EXPENSES:			
Cost of Gas, \$/yr.	727,546	791,564	869,643
Operating Cost,			
\$/yr.	239,200	320,000	345,000
Fixed Charges,			
\$/yr.	373,245	420,370	476,010
Total Expenses,			
\$/yr.	1,339,991	1,531,934	1,690,653
NET REVENUE,			
\$/yr.	102,647	103,845	176,000

110

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Market Data

Statement Respecting Franchise Rights of Juarez Natural

Applicants are informed and believe and therefore state that Juarez Natural has received all necessary franchises and authorizations from Mexican authorities empowering it to undertake the construction of its proposed facilities.

(114)

Copies of instruments evidencing such franchises and authorizations, together with the English translation thereof, are attached hereto under Tabs Nos. A, B, C and D.

* * * * *

112

Sr. Alfonso Caraveo
Gas Natural de Juarez, S.A.
Ciudad.

With reference to your application presented to the Municipal Presidency, on August 28th of this year, the Alderman had a meeting on the 29th of last month and agreed to permit your company to install a natural gas distribution system for domestic and industrial use in the city in the zones where service is not presently provided by the company that now sells natural gas.

It is understood that the installation of this line will be in accordance with the authorization given by the Secretary of Industry and Commerce, including all requirements of Federal and State authorities.

Attentively

CIUDAD JUAREZ CHIH. Sept. 8, 1964

Aureliano Gonzalez Vargas
Mayor

* * * * *

114

Gas Natural de Jusrez, S.A.
c/o Alfonso Caraveo O.
Cd. Juarez, Chih.

With reference to the application presented by you to this office, for the installation of a natural gas distribution

(114)

ssytem for domestic and industrial consumers in Cd.-Juarez, Chih., I respond as follows.

According to Article 143 of the Sanitary Code of—The United States of Mexico, this office under my supervision grants preliminary AUTHORIZATION, to Gas Natural de Juarez, SA with respect to Sanitation, for the installation of a natural gas distribution system in Cd. Juarez, Chih.

This authorization does not superscribe additional authorization by the "GENERAL DIRECTION OF GAS" of the Secretary of Industry and Commerce.

During the construction of the distributing system this office will supervise, the work being done, to see that all requirements established by the Sanitary Code are carried out.

The Company represented by you, should present, as soon as possible, the plans and specifications for the entire project.

Once the construction of the line is finished, the Company should advise this office, so that an inspection can be made with the necessary tests, in order to authorize its use.

ING. MIGUEL MONTES DE OCA
*Director of Health and Assistance
Secretariat.*

• • • • •
116

Chihuahua, Chih.
November 3, 1964

C. Ing. Alfonso Caraveo
16 de Septiembre 240 Ote.
Cd. Juarez, Chih.

With reference to your letter of September 9, 1964, transacted through this office on October 27, 1964, it is my

(120)

pleasure to advise you that the State Government has no objection to permitting the installation of a Natural Gas distribution system for domestic and industrial use, by Gas Natural de Juarez, S.A. (company being formed), if and when this company complies with the rules established by the Secretary of Industry and Commerce and fulfills all requirements set up by the Federal authorities.

Attentively

ARQ. MARIO S. ARRAS RODRIGUEZ
Chief, Dept. of Commerce &
Public works

State of Chihuahua

* * * * *

120

MAJOR OFFICIAL

INDUSTRY AND COMMERCE
OF
SECRETARIAT

Mexico, D. F., 1 April, 1965

GAS NATURAL DE JUAREZ, S. A.
16 de September, No. 738 East
Cd. Juarez, Chihuahua

ATTN: Ing. Alfonso Caraveo, Manager

With reference to your letter of August 13th, 1964 in which you apply for authorization to contract for the installation of a natural gas distribution system in Cd. Juarez, Chihuahua, this Secretariat states the following:

Having studied the documents sent to date, it has no objection to the construction referred to by you, but the AUTHORIZATION FOR OPERATION AND USE OF THE EQUIPMENT AND THE SYSTEM referred to in

(120)

Article 27 of the respective Code will be given once the installations have been completed and approved on the basis of reports submitted by the technicians of the Secretariat.

For the purpose of making certain that the above mentioned installations comply with the technical conditions that guarantee efficient service and the security of the people and their properties, the construction and the corresponding tests, including sealing, are finished. For this purpose you will deposit at the Banco Nacional de Mexico, S. A. for this Secretariat, the amount of \$72,000.00 pesos, which will be applied to the payment of salaries of the technician or technicians whom this Secretariat considers convenient to hire for the inspections. The balance, if any, will be returned to the company when authorization for operation and use of the system is given.

In terms of the technical memorandum which you have presented outlining the program of construction, authorization to start construction immediately in Zones 1, 2 and 3 is hereby given; within the boundaries described below:

a) *Zone No. 1.* Distribution system within the following limits: Bounded on the north by Malecon del Rio Bravo and Cholula Street, bounded on the south by Patzcuaro and Ave. 16 de Septiembre, bounded on the east by Ave. de Las Americas and on the west by Guatemala and Honduras Streets. This covers 162.5 hectares and 209 blocks.

b) *Zone No. 2.* Construction of a pipeline that will connect the distribution system of Zone No. 1 with that of Zone No. 3, utilizing Calzada de Las Americas, 16 de Septiembre, Ignacia Ramirez, Vicente Guerrero, Panama and Insurgentes streets.

121

c) *Zone No. 3.* Distribution system constructed within the following limits: Bounded on the north by Avenida Insurgentes, on the south by Heroes Ninos and Chihuahua Streets, bounded on the east by Pdorfirio Diaz and on the west by Guatemala and Ave. de La Reforma and Rep. de Costa Rica. This covers 82,79 hectares with 83 blocks; with the metering and regulating station to be installed on the north of Ave. de Las Americas.

According to Articles 55 and 58 referred to by the Code of Gas Distribution, the equipment for the handling and use of gas should be previously approved and authorized by this Secretariat. Included in the same will be machinery to move it through the pipe line, the pipe, the instruments to regulate, pressure and measure the volume, the accessories for control and security and the means to use it directly as fuel; consequently, the specifications and characteristics of construction and use of the above mentioned equipment should obey the rules that in each particular case are approved by this Secretariat. Equipment of foreign origin can be used in these specifications for construction only when it has been previously accepted by the same Secretariat.

The company, Gas Natural de Juarez, S. A., should start the construction of the installations mentioned during a period of 30 working days, starting as of today, and finish construction during a period not to exceed 180 working days after the work is started.

The information in the descriptive memorandum for construction is insufficient for the present approval of Zones No. 4 through 41 inclusive. Therefore, prior to construction of the subsequent installations in these zones,

(121)

the company will comply with technical recommendations which in each case are set by this Secretariat.

Attentively,

(signed)

FRANCISCO RODRIGUEZ GOMEZ
for the Secretary, Major Official
SECRETARY OF INDUSTRY & COMMERCE

122

EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION
Conversion to Natural Gas

There is set forth below information and data furnished to Applicant respecting conversion to natural gas.

A. *Modification of Equipment*

1. *Residential and Small Commercial.* Practically the only fuel presently available to customers in the area of the proposed distribution system is liquid petroleum gas. With the exception of a few homes which presently use kerosene burners for cooking, residents and small businesses presently receive LPG in portable cylinders which are delivered from house to house by local LPG dealers. The cylinders are connected to gas lines leading to the various gas burning appliances, principally cooking and heating units. These appliances can be prepared for burning natural gas by enlarging the orifices to the existing burners at a very modest cost, averaging less than \$5.00 per customer. To accomplish these conversions the distributor will maintain a crew of trained personnel, tools, equipment and supplies to complete the conversions as well as to test the appliances prior to their use with

natural gas. It is planned to provide the above service for customers free of charge.

2. *Large Commercial and Industrial Customers.* Industrial and commercial plants in the area to be served by the proposed distribution system presently burn fuel oil as well as LPG. Conversion of these systems will be made on an individual basis after consultation with the customer's technical personnel. The distribution company will maintain a staff of qualified engineers backed by experienced consultants who will prepare economic feasibility studies and will assist potential consumers in the design of facilities for conversion to natural gas. Discussions have been started and technical studies are now underway for the major industrial consumers.

B. *Justification*

Justification for conversion to natural gas is based on the many well-known operational advantages of natural gas as a fuel in addition to the following advantages in the relative costs of the available competitive fuels in the area to be served:

<i>Competitive Fuel</i>	<i>Relative Cost, % Higher Than Natural Gas</i>
Residential LPG	73
Industrial Fuel Oil	8
Electricity	200
Industrial LPG	40 to 340

(123)

123

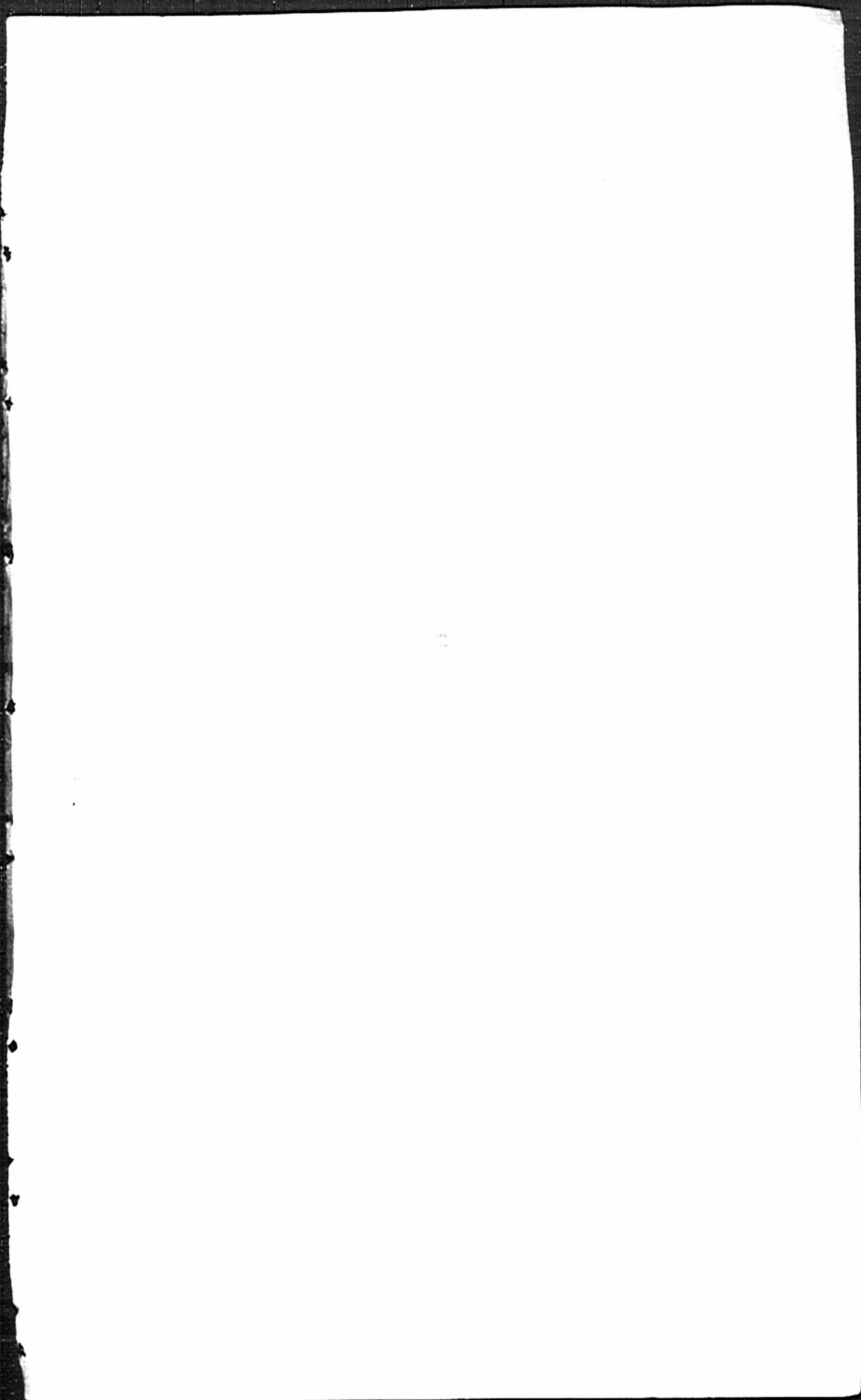
EL PASO NATURAL GAS COMPANY
AND
EL PASO GAS TRANSPORTATION CORPORATION

Cost of Facilities
Del Norte Gas Company Project
Cost Estimate Summary

<i>Description</i>	<i>Cost *</i>
Del Norte Gas Company Sales Meter Station #1	\$11,300
Del Norte Gas Company Sales Meter Station #2	7,500
Del Norte Gas Company Sales Meter Station #3	10,300
Total Direct Cost	\$29,100
Add: General Overhead—5%	1,500
Contingency—5%	1,500
TOTAL COST	<u>\$32,100</u>

* Costs rounded off to nearest \$100.

* * * * *



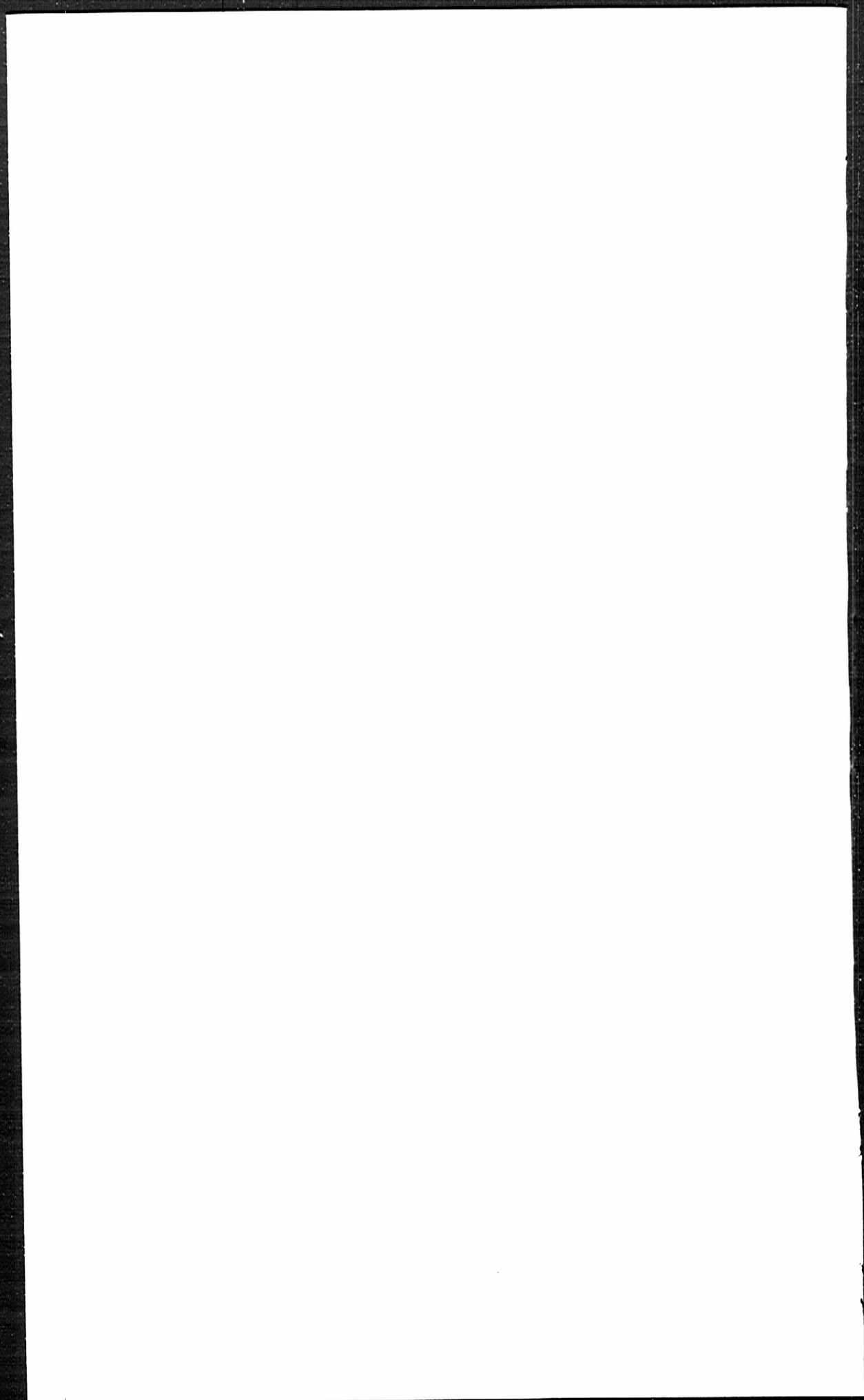
EL PASO NATURAL GAS COMPANY
and
EL PASO GAS TRANSPORTATION CORPORATION

Revenues-Expenses-Income

Estimated Revenues to be Derived from the Sale and
Delivery of Natural Gas to Del Norte and Estimated Incremental
Cost of Service and Rate Base Applicable to the Proposed Facilities

Line No.		1966	1967	1968	Basis for Estimate
	<u>Annual Sales - Mcf at 14.73 psia</u>				
1	For Resale to Juarez Gas Company	367,500	378,000	388,500	Market Data, Exhibit I
2	For Resale to Juarez Natural	2,543,200	2,765,000	3,036,200	Market Data, Exhibit I
3	Total	2,910,700	3,143,000	3,424,700	
	<u>Annual Revenues*</u>				
4	Rate Schedule A-3	\$511,963	\$552,822	\$ 602,370	55% x Line 3 at 31.98¢/Mcf (32.35¢/Mcf at 14.9 psia)
5	Rate Schedule B-2	380,108	410,444	447,232	45% x Line 3 at 29.02¢/Mcf (29.35¢/Mcf at 14.9 psia)
6	Total	\$892,071	\$963,266	\$1,049,602	
	<u>Incremental Cost of Service</u>				
7	Operation and Maintenance	\$ 1,200	\$ 1,200	\$ 1,200	\$400 Per Meter Station
8	Administrative and General	420	420	420	35% x Line No. 7
9	Depreciation	979	979	979	3.05% x Line No. 14
10	Other Taxes	482	482	482	1.5% x Line No. 14
11	Return	1,975	1,915	1,856	6.125% x Line No. 20
12	Federal Income Tax	554	511	509	1/
13	Total Cost of Service	\$ 5,610	\$ 5,507	\$ 5,446	
	<u>Rate Base</u>				
14	Gas Plant	\$ 32,100	\$ 32,100	\$ 32,100	Cost of Facilities, Exhibit K
	<u>Reserves for Depreciation</u>				
15	Beginning Balance	\$ -	\$ 979	\$ 1,958	
16	Ending Balance	979	1,958	2,937	
17	Average	\$ 490	\$ 1,469	\$ 2,448	
18	Net Plant	\$ 31,610	\$ 30,631	\$ 29,652	
19	Working Capital	642	642	642	2% x Line No. 14
20	Rate Base	\$ 32,252	\$ 31,273	\$ 30,294	
	<u>1/ Federal Income Tax Computation:</u>				
21	Return	\$ 1,975	\$ 1,915	\$ 1,856	
22	Less: Interest Expense	1,070	1,056	1,000	5% x 2/3 Line No. 14, Financed Over 20 Years With 38 Equal Semi-Annual Retirements Commencing Second Year
23	Excess of Tax Over Book Depreciation	305	305	305	Tax Depreciation (4%) Less Line 9
24	Balance of Return	\$ 600	\$ 554	\$ 551	
25	Federal Income Tax	\$ 554	\$ 511	\$ 509	92.30769% x Line No. 24 (48% Tax Rate)

* Note: Annual revenues include transportation charge of Transportation Corporation.



132

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

IN THE MATTER OF
DEL NORTE NATURAL GAS COMPANY

DOCKET No. CP66-104

APPLICATION FOR AUTHORIZATION
TO EXPORT NATURAL GAS

Comes now Del Norte Natural Gas Company (Applicant) and, pursuant to the provisions of Section 3 of the Natural Gas Act and Part 153 of the Commission's regulations under the Natural Gas Act, hereby applies for an Order authorizing Applicant to export natural gas from the United States to the Republic of Mexico as is hereinafter more particularly set forth.

In support of this application, Applicant states:

(a)

The exact legal name of Applicant is Del Norte Natural Gas Company.

(b)

The name, title and post office address of the person to whom correspondence in regard to this application shall be addressed is:

John L. Harlan, President
Del Norte Natural Gas Company
1026 Southwest National Bank Building
El Paso, Texas

with copy to:

Henry W. Simon
c/o Simon & Simon
Attorneys at Law
816 First National Building
Fort Worth, Texas

(133)

133

(c)

Applicant is a corporation organized and existing under the laws of the State of Texas. Applicant's principal office is located at El Paso, Texas. Applicant is not authorized to operate in any other state.

(d)

Applicant does not produce gas which is the subject matter of this application and will obtain its gas supply from El Paso Natural Gas Company at or near the city gates of the City of El Paso, Texas.

The gas that Applicant intends to purchase from El Paso Natural Gas Company and export to Mexico will be taken from El Paso Natural Gas Company's general supply originating in the Permian Basin.

The most recent estimate of the remaining natural-gas reserves owned by or committed to El Paso Natural Gas Company in the Permian Basin is outlined in 1964 Federal Power Commission Form No. 15 on file with the Commission and incorporated herein by reference.

(e)

(1) The purchasers of the gas proposed to be exported are: (a) Gas Natural de Juarez, S.A., a corporation under the laws of the Republic of Mexico, and (b) Juarez Gas Company, S.A., also a corporation under the laws of the Republic of Mexico.

(2) Gas purchased from Applicant both by Gas Natural de Juarez and Juarez Gas Company is proposed to be used to serve the market demands of both companies' gas distribution systems, each of which will serve separate

zones of the City of Juarez, Chihuahua, Mexico. Exhibit X-2 submitted

134

herewith is a map of the City of Juarez showing the zones thereof to be served by Gas Natural de Juarez and the zones thereof to be served by Juarez Gas Company with the natural gas proposed to be exported by Applicant.

The exportation of natural gas for use by the Juarez Gas Company, S.A., to serve the market demands of its gas distribution system for which authorization is herein requested is now being performed by Southern Union Gas Company under authorization granted by order of this Commission issued the 2nd day of January, 1945, at Docket No. G-513. There has been no previous authorization to export natural gas for use by Gas Natural de Juarez, S.A., to serve the market demands of its gas distribution system. This system is a new system, at this time under construction and completed in some zones of the city. Southern Union Gas Company has assigned to Applicant its contract with Juarez Gas Company, a copy of said assignment being submitted herewith as Exhibit X-1 to this application. Applicant proposes to continue, without change, the service rendered by Southern Union Gas Company to Juarez Gas Company, under contract dated June 17, 1952, and filed with the Commission on July 1, 1952.

(3) (a) The rate or rates proposed to be charged Gas Natural de Juarez for gas sold and delivered to it by Applicant are:

1.6243¢ per cubic meter for all gas resold by said company for domestic and commercial use.

1.2535¢ per cubic meter for all gas resold by said company for industrial use.

(134)

(b) The rate or rates proposed to be charged Juarez Gas Company for gas sold and delivered to it by Applicant are:

135

Gas Sold For Industrial Purposes

34.85¢ per MCF plus 50% of the excess above 40.85¢ per MCF charged by Juarez Gas Company to ultimate customers, including any minimum charge and any demand or readiness-to-serve charge. The U. S. dollar value of Juarez Gas Company's selling price in each calendar month is determined by that month's final selling quotation of the Mexico peso by the Bank of Mexico.

Minimum Charge: \$25.00 per month per industrial consumer.

All Other Gas (including lost or unaccounted-for gas)
45.35¢ per MCF.

Applicant does not render similar service in the United States.

(f)

Not applicable as Applicant does not propose to import natural gas.

(g)

The facilities proposed to be utilized by Applicant in the exportation of natural gas are as follows:

No. 1. A six-inch pipeline, about 5,200 feet in length, connecting with the gas transmission line of the El Paso Natural Gas Company at Southern Union Gas Company's central station on West Third and Santa Fe Streets in the City of El Paso, Texas. From this point the pipeline extends south on Santa Fe Street to Tenth Avenue where it turns east to and then south on El Paso Street reaching a metering

station at the border near the El Paso Street railroad bridge and continuing over the bridge across the Rio Grande River to the City of Juarez, Chihuahua, Mexico. At a point downstream of the metering station a 6-inch branch line continues parallel to the river bank to the Stanton Street Bridge on the U. S. side of the border where it turns south and crosses the river over the bridge into the City of Juarez, Mexico. These two pipelines interconnect on the south side of the international boundary with the pipelines of the Juarez Gas Company for distribution to consumers in the central zone of the City of Juarez.

No. 2. A six-inch pipeline, about 5,250 feet in length, connecting with the gas transmission line of the El Paso Natural Gas Company at or near the intersection of San Antonio and Dallas Streets in the City of

136

El Paso, Texas. From this point the pipeline extends east a distance of about 300 feet to the Franklin Canal where it crosses over the canal and then under a Southern Pacific Railroad Company spur. It then extends south a distance of about 1,300 feet to reach the United States border line at Cordova Island. From this point the pipeline runs adjacent to and parallel to the border line fence remaining in the United States until it reaches the Rio Grande River. The pipeline extends across and under the river to the international boundary between the United States and Mexico and then interconnects with the pipeline of Gas Natural de Juarez, extending from that point to the north eastern area of the City of Juarez, Chihuahua, Mexico.

No. 3. A twelve-inch pipeline, about 7,000 feet in length, connecting with the gas transmission line of the El Paso Natural Gas Company at or near the city gates in El Paso, Texas, extending southwest to Delta Street where it will extend southwest along Delta Street travelling to the intersection of Delta and Glenwood Street. At this point the pipeline will turn

(136)

south along Glenwood Street to the border. From that point it will extend across and under the Rio Grande to the international boundary between the United States and Mexico, where said line interconnects with the pipeline of Gas Natural de Juarez.

The portions of the above-described facilities located in the United States will be owned and operated by Applicant, and the facilities located in Mexico will be owned and operated by Gas Natural de Juarez, S.A., or by the Juarez Gas Company, S. A., as indicated above.

137

(h)

(a) The exportation of natural gas proposed to be made by Applicant will not be inconsistent with the public interest for the following reasons:

Juarez Gas Company, S.A., has been purchasing gas exported from the United States of America since May 7, 1935, for resale to its customers in certain zones in the City of Juarez, State of Chihuahua, Mexico. The original contract was between Texas Cities Gas Company, as seller, and Juarez Gas Company, as buyer. Southern Union Gas Company succeeded to the rights and obligations of Texas Cities Gas Company under the original contract. Southern Union Gas Company and its predecessors have continuously exported gas to Juarez Gas Company since said date above mentioned. Applicant proposes to carry on such operations without change, except that the facilities which will be utilized to export gas will be changed to permit Applicant to serve both the Juarez Gas Company and Gas Natural de Juarez through new facilities connecting with the gas transmission line of El Paso Natural Gas Company and extending to the international boundary of the United States and the Republic of Mexico.

As Juarez Gas Company supplies only a part of the City of Juarez, the other parts of the City of Juarez, Chihuahua, do not have natural gas service. Gas Natural de Juarez, S.A., has procured all the consents and authority from the Republic of Mexico, State of Chihuahua, and the City of Juarez necessary to permit it to serve other parts of the City of Juarez, and through its distribution system presently under construction and partially completed, it proposes to supply natural gas to those areas of the City of

138

Juarez, Mexico, not served by Juarez Gas Company. The quantity of gas required for delivery to the Juarez Gas Company and to Gas Natural de Juarez would not, under any circumstances known or at present foreseeable, result in any impairment or inadequacy of service by El Paso Natural Gas Company. Its present reserves for El Paso and vicinity, as well as the capacity of its pipelines, are entirely adequate to allow it to render all necessary service to all its customers.

It will be consistent with the public interest to further good relations with the Republic of Mexico and its citizens to continue service to the Juarez Gas Company and to render service to Gas Natural de Juarez so as to make gas available to Mexican citizens in the zones of Juarez where gas is not now available.

(2) The proposed exportation of natural gas will not in any way impair the ability of Applicant to render natural gas service at reasonable rates to its customers in the United States, because Applicant does not render natural gas service to any customers in the United States.

(i)

The following is a list of Exhibits submitted with this application, pursuant to Section 153.4(a) of the Commis-

(138)

sion Regulations under the Natural Gas Act, which Exhibits are made a part hereof.

Exhibit A.—A Copy of Articles of Incorporation and a copy of the Bylaws of Applicant.

Exhibit B.—A detailed statement of the financial and corporate relationship existing between Applicant and any other person or corporation.

139

Exhibit C.—A statement, including a signed opinion of counsel, showing that the exportation of natural gas, as described herein, is within the corporate powers of Applicant, and that Applicant has complied with the rules and regulations of the regulatory authorities of the State of Texas, which is the state in which Applicant operates.

Exhibit D.—A copy of Applicant's contract with Gas Natural de Juarez, S.A. A copy of the contract between Southern Union Gas Company and Juarez Gas Company, S.A., dated June 17, 1952, and filed with the Commission on July 1, 1952 (see Docket G-513), is incorporated herein by reference.

Exhibit E.—Not applicable, as application is not for authority to import gas.

Exhibit F.—A map showing the physical location of the facilities utilized in Applicant's proposed export operations.

Exhibit X-1.—Copy of assignment from Southern Union Gas Company to Del Norte Natural Gas Company, assigning Southern Union Gas

(141)

Company's rights under the contract of June 17, 1952, with the Juarez Gas Company.

Exhibit X-2—Map of the City of Juarez showing the part thereof served by Juarez Gas Company and the part thereof to be served by Gas Natural de Juarez.

WHEREFORE, Applicant prays the issuance of the Order and Authorization hereinabove requested, and for such other and further relief as the Commission may find proper.

Respectfully submitted,

DEL NORTE NATURAL GAS COMPANY
By

President

ATTEST:

Secretary

* * * * *

141

Exhibit A-1

In the name and by the authority of
THE STATE OF TEXAS
Office of the Secretary of State

Certificate of Incorporation
of

DEL NORTE NATURAL GAS COMPANY
Charter No. 214453

The undersigned, as Secretary of State of the State of Texas, hereby certifies that duplicate originals of Articles of Incorporation for the above corporation duly signed

(141)

and verified pursuant to the provisions of the Texas Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation and attaches hereto a duplicate original of the Articles of Incorporation.

Dated June 9th, 1965.

CRAWFORD C. MARTIN
Secretary of State

(SEAL)

* * * * *

160

Exhibit "D"

NATURAL GAS CONTRACT

This Agreement, this day made and entered into, by and between DEL NORTE NATURAL GAS COMPANY, a Texas corporation) hereinafter referred to as "Seller"), and GAS NATURAL DE JUAREZ, S. A., a corporation licensed and incorporated under the laws of the Republic of Mexico (hereinafter referred to as "Buyer"),

Witnesseth:

Whereas, Buyer is constructing a system of distribution pipes, mains and appurtenances, located in the City of Juarez, Chihuahua, Republic of Mexico, wherein buyer will distribute and sell gas to various residential, commercial and industrial consumers; and Seller has facilities for the sale and delivery of such gas to Buyer; and

Whereas, the parties hereto desire to enter into this agreement for the purchase and sale of natural gas.

Now, Therefore, in consideration of the premises and of their mutual covenants and agreements herein contained, the parties hereto have agreed and do now agree as follows:

1. *Supply of Gas*: Subject to the terms and conditions of this contract, Seller will sell and deliver to Buyer and Buyer will take, purchase and pay for the entire natural gas requirements of the Buyer's gas distribution system in the City of Juarez, Mexico, and environs. The term "environs" is hereby defined as the service area of Buyer in and about the City of Juarez, Mexico, as determined from time to time by the sales of gas by Buyer;

161

provided, however, that Seller shall not be obligated hereunder to deliver natural gas to Buyer in excess of the volume of gas available to Seller as hereinafter specified. It is recognized by the parties hereto that Seller will purchase from El Paso Natural Gas Company all gas sold to Buyer; and the parties, therefore, agree that all obligations of Seller hereunder shall be subject to the provisions of the applicable tariff of El Paso Natural Gas Company on file with the Federal Power Commission, as the same may be effective from time to time, and of the related service agreement between Seller and El Paso Natural Gas Company covering the purchase of the gas sold by Seller to Buyer hereunder.

2. *Facilities*: During the term hereof, Seller shall operate and maintain meters, regulators and/or other measurement equipment and devices for regulation of the pressure of the gas delivered hereunder and the measurement thereof. All such meters, regulators, structures, appurtenances, equipment and/or devices shall be and remain the property of Seller at all times.

(161)

Seller will provide a suitable measurement station location for Seller's property containing all of the facilities of Seller for the delivery of gas to Buyer at a convenient location in or adjacent to the City of El Paso, Texas, U.S.A., as authorized by the Federal Power Commission.

Seller shall not own or operate any facilities for the delivery of gas hereunder at any location outside the continental limits of the United States of America.

3. *Point of Delivery*: The point of delivery for all gas sold hereunder shall be at the downstream outlet of the meter installed by Seller

162

at Seller's measurement station above mentioned. The Buyer shall construct, operate and maintain all necessary facilities for the transporting of the gas sold hereunder from the above point of delivery across the international boundary line existing between the Republic of Mexico and the United States of America. Such facilities of the Buyer shall be the facilities used for the purpose of exporting the natural gas sold hereunder.

At the "point of delivery," as defined above, title to the gas sold and delivered hereunder shall pass from Seller to Buyer, and such gas shall thereafter be and remain in Buyer's exclusive possession and control, Seller assuming no responsibility thereof. Seller hereby warrants title to all gas sold and delivered to Buyer hereunder.

4. *Pressure*: Seller will deliver gas hereunder to Buyer at the point of delivery at the pressure which from time to time may be stipulated in writing by Buyer; provided, however, that the maximum pressure required to be maintained at any time by Seller at the point of delivery shall be 3.5 kilograms per square centimeter gauge. Buyer shall

receive the gas at the point of delivery provided for hereunder at such pressure and thereafter regulate, control and be responsible for same.

5. *Character of Gas*: Gas delivered hereunder shall be of merchantable quality which meets the BTU and other quality provisions in the general terms and conditions of El Paso Natural Gas Company's applicable tariff on file with the Federal Power Commission.

6. *Price*: Buyer agrees to pay Seller for all gas delivered hereunder as follows:

163

1.6243 cents per cubic meter for all gas resold by Buyer for domestic and commercial use.

1.2535cents per cubic meter for all gas resold by Buyer for industrial use.

If the price paid by Seller for all or part of the gas supplied to Buyer under this agreement shall be increased or decreased from the price paid by Seller on the effective beginning date of this contract, by as much as 0.01765¢ per cubic meter, then the price to be paid by Buyer hereunder for such gas shall be increased or decreased, as the case may be, by the exact amount of such increase or decrease in Seller's gas cost; provided, however, that Seller will give at least sixty (60) days notice of such increase or decrease, and such increase or decrease in Buyer's cost will not be placed in effect until it shall be in effect as to purchases of gas by Seller. All prices are U.S. Currency.

The rates herein set out are subject, however, to all taxes which may be payable under the "Limited Sales, Excise and Use Tax Act" of the State of Texas, and amendments thereto, and to any new, additional or increased taxes (other than ad valorem or income taxes), licenses, fees or

(163)

charges levied, assessed or made by any governmental authority on the gas itself, or the act, right, use, privilege, transportation, handling, sale, delivery or consumption thereof. It is expressly agreed that said taxes, and any such new, additional or increased other taxes imposed which will directly or indirectly result in an increase in the cost of gas to Seller, shall be added to the rate herein set out and borne by the Buyer.

7. *Gas Measurement*: The unit of volume for the determination of the quantity of gas delivered to Buyer hereunder shall be one cubic

164

meter or multiples thereof, at a measurement condition of 20° Centigrade (herein sometimes abbreviated as "C") temperature and at a pressure of 1.0000 kilograms per square centimeter absolute.

Volume measurements of gas hereunder shall be in accordance with the procedures recommended in Report #3 of the Gas Measurement Committee of the American Gas Association dated April, 1955, as revised January, 1956.

For measurement determinations, the average atmospheric (barometric) pressure existing at the delivery point shall be assumed to be 1.0125 kilograms per square centimeter absolute.

The actual temperature of the gas flowing through the meter shall be determined by the use of a recording thermometer furnished and installed by Seller. The average temperature as determined from the chart installed on the recording thermometer, or of that portion of the chart during which gas was passing through the meter (if gas was not passing through for the entire chart period) shall be used in measurement computations of gas delivered.

(165)

The specific gravity of gas delivered hereunder shall be determined by a standard type instrument of the gravity balance or impact type unit, and such determination shall be made as necessary to adequately and accurately measure the average specific gravity of the gas delivered hereunder.

At the measurement station, above mentioned, where Seller has installed meters, thermometers and other measurement instruments, such instruments shall be the exclusive method and means of calculating the

165

volume of gas delivered hereunder to Buyer, except as otherwise herein expressly provided.

Buyer may at its option and at its expense install, maintain and operate, downstream from the point of delivery and adjacent to Seller's measurement station, such measuring instruments as may be desired by Buyer for the purpose of checking the volume and condition of gas delivered by Seller. Such facilities shall be owned, maintained and operated by Buyer so as not to interfere with the Seller's facilities or the normal flow of gas from the delivery point.

Seller shall make provisions for the reading of Seller's meter and other instruments as may be required. Seller's measurement charts or records as they apply to this contract shall be accessible to Buyer for inspection and examination at any reasonable time. Reading, calibration and adjustment of Seller's meter, thermometer and other instruments shall be performed only by Seller; however, such readings, calibrations and adjustments may be witnessed by representatives of Buyer.

8. *Meter Tests*: Upon the written request of Buyer at reasonable intervals, any of Seller's instruments used for

(165)

measurement of the volume of gas delivered by Seller shall be tested by Seller, at Seller's expense, and in the presence of Buyer's representative(s); the time for such tests to be set promptly by Seller upon receipt of such written request from Buyer. Any meter found on test to register an amount not more than 2% fast or slow shall be deemed to be correct. In the event any meter and/or instrument on test is found to be more than 2% fast or slow, adjustment shall be made for the gas

166

delivered during the period said meter and/or instrument was registering inaccurately, which period shall in no event be deemed to extend prior to the beginning of the last monthly billing period preceding the one giving rise to complaint or which may arise on account of such inaccuracy. Adjustment shall be made upon the basis of the best data available, using the first of the following methods which is feasible:

(a) By using registration of Buyer's check meter, instruments or gauges, if installed and proved to be registering accurately;

(b) By correcting the error, if the percentage error is ascertainable by calibration test or mathematical calculation; or

(c) By estimating the quantity of gas delivered by comparison with deliveries during preceding periods under similar conditions when accurate registration was obtained.

The aforesaid requirements of this section shall apply equally to all of Buyer's meters used for the purpose of determining volumes of gas sold to Buyer under this contract.

(167)

9. *Monthly Bills*: Seller agrees that once each month, Seller will compute and determine the volume of gas delivered hereunder; such computation and determination to be based upon the reading of the meter and/or charts, instruments and gauges used by Seller for such purposes. On or before the tenth day following such determination, Seller will render to Buyer a bill showing the total volume of gas delivered to Buyer during the next preceding monthly billing period and the amount due for such gas hereunder. Such bills shall be due on the date shown thereon and Buyer agrees to pay the same with current United States currency at the office of Seller in

167

El Paso, Texas, within ten (10) days after the due date thereof. Should Buyer fail to pay said bill in full to Seller within thirty (30) days after such amount becomes due as aforesaid, then interest shall accrue on the unpaid portion of said bill at the rate of ten per cent (10%) per annum from the due date thereof to date of payment, and such interest shall be paid to Seller by Buyer.

Buyer agrees that in the event any money due Seller hereunder shall become delinquent and remain delinquent for a period of as much as fifteen (15) days after the due date thereof, then Buyer, upon demand of the Seller, at any time thereafter, will deposit with Seller a sum equal to the highest single monthly bill of Buyer during the twelve (12) months next preceding such demand. Such deposit shall be made as security for the payment of any monies which may be or become due Seller from Buyer hereunder and Buyer hereby agrees that Seller shall have the right at its option to appropriate all or any part of such deposit and apply the same to the payment of any monies due Seller by Buyer hereunder. In the event such security deposit shall be applied to the payment of money due by

(167)

Buyer to Seller, Buyer shall make a new security deposit under the same terms as above stated. Security deposits as required herein shall be made in United States currency. The term of this paragraph shall not in any manner affect any other rights or remedies which Seller may have in the event of non-payment of sums due Seller hereunder.

10. *Regulations*: This agreement shall be interpreted and performed in accordance with the laws of the State of Texas and the United States of America and shall be subject to the lawful orders, rules and/or regulations of any and all duly constituted governmental authorities in the United States of

168

America, having jurisdiction over Seller, Buyer and the subject matter of this contract.

11. *Use of Gas*: All gas sold and delivered hereunder shall be used by Buyer to furnish the natural gas requirements of its customers in the City of Juarez, Mexico, and its environs.

12. *Force Majeure*: The Seller shall be excused for delay and failure to perform its agreements and undertakings, in whole or in part, when and to the extent that such failure or delay is occasioned by fire, flood, wind, lightning or other acts of the elements, explosion, act of God, act of the public enemy or interference of civil and/or military authorities, mobs, labor difficulties, vandalism, sabotage, malicious mischief, usurpation of power, depletion of wells, freezing or accidents to wells, pipelines or other casualty or cause beyond the reasonable control of the parties, respectively, which delays or prevents performance hereunder, in whole or in part, or temporarily curtails or discontinues the supply of gas contemplated hereunder, as the case may be; provided, however, that Seller, upon the occurrence of such

(169)

force majeure shall notify the Buyer as soon as possible of all pertinent facts and take all reasonable steps promptly and diligently to prevent such causes, if feasible to do so, or to minimize or eliminate the effect. It is understood and agreed that settlement of strikes or other labor disputes shall be at the sole discretion of Seller.

Seller, without liability to Buyer, may interrupt its service hereunder when service to Seller is interrupted by El Paso Natural Gas Company for any reason allowed under its applicable tariff, over which Seller has no control, and for the further purpose of making necessary alterations and

169

repairs to its pipelines and measurement station equipment, but only for such time as may be reasonable or unavoidable; and Seller shall give to Buyer, except in case of an emergency, reasonable notice of its intention so to do and shall endeavor to arrange such interruptions so as to inconvenience Buyer and the Buyer's consumers as little as possible.

Whenever service hereunder has been interrupted by Seller for any reason, before resuming service, Seller shall give such reasonable notice to Buyer as will permit Buyer to have a representative present when gas is again turned into Buyer's lines.

13. *Term:* This contract shall become effective at 7:00 A.M. (MST) on the fifteenth (15th) day following the date of the final order of the Federal Power Commission approving the operation and maintenance of border facilities of the Seller for the exportation of gas by Seller to the Republic of Mexico, or the date of the final order of the Federal Power Commission granting Buyer's permit and

(169)

authorization to export the natural gas to be sold hereunder, whichever order shall be the later in time. Having once become effective, this contract shall remain in effect until midnight on December 31 of the year following the calendar year in which the contract becomes effective, and from year to year thereafter, unless either party hereto shall on or before the 1st day of July next preceeding the above stated termination date gives notice to the other party in writing of such party's intention to terminate the contract on the aforesaid termination date. In the event either party shall desire to terminate the contract at midnight on the 31st of December of any year this contract is extended after the

170

aforesaid termination date, notice in writing of such termination shall be given to the other party on or before the 1st day of July next preceding the date such contract is to terminate.

Buyer shall have the right to terminate this contract by written notice to Seller if Seller violates any of the terms or conditions hereof and for thirty (30) days after receipt of written notice from Buyer of such violation fails to remedy or correct same. Seller, in addition to all its other rights and remedies, shall have the right, after having given five (5) days' notice to Buyer, to discontinue the supply of gas hereunder to Buyer whenever any monthly bill (to the extent not in dispute) remains delinquent for a period of fifteen (15) days after the same shall become due; and if Buyer violates any of the other terms or conditions of this contract and for thirty (30) days after receipt of written notice from Seller of such violation fails to remedy or correct same, Seller shall have the right to terminate this contract by written notice to Buyer.

(171)

14. *Notices:* Written notice hereunder shall be deemed given and received when and if deposited in the United States mail, postage prepaid and registered, addressed to:

Seller—Del Norte Natural Gas Company, 1026 Southwest National Bank Building, El Paso, Texas, U.S.A.

Buyer—Gas Natural de Juarez, S.A., 16 de Septiembre No. 249 Oriente, City of Juarez, Chihuahua, Republic of Mexico.

171

or to such other address as either party may respectively hereafter designate in writing and deliver to the other party; provided, however, that in all cases of emergency such notice as is feasible shall be given by telephone or telegraph or in person and confirmed by written notice as now provided.

15. *Succession and Assignment:* This agreement and all of the terms, provisions, stipulations and covenants hereof shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

In Witness Whereof, the parties hereto have caused this contract to be duly signed, attested and sealed on the day of 19.....

DEL NORTE NATURAL GAS COMPANY

Attest:

Secretary

By _____
President
Seller

GAS NATURAL DE JUAREZ, S.A.

Attest:

Secretary

By _____
President
Buyer

Gas Purchase Contract

This Agreement made and entered into this 17th day of June, 1952, by and between SOUTHERN UNION GAS COMPANY, a corporation (hereinafter referred to as "Seller"), and JUAREZ GAS COMPANY, S. A., a corporation (hereinafter referred to as "Buyer"),

Witnesseth:

Whereas, Buyer is authorized by order(s) of Federal Power Commission in Docket G-107 to export natural gas for sale by it in Juarez, Mexico, pursuant to Section 3 of the Natural Gas Act, as amended; and

Whereas, Seller and Buyer each hold a Presidential Permit authorizing them, respectively, to maintain their necessary facilities at the international boundry for the sale of gas by Seller to Buyer; and

Whereas, the parties have been selling and buying gas for a period of years under such authorizations and they recognize that their contractual arrangements should be re-expressed and expanded so as to make provision for price adjustment and for an extended term:

Now, Therefore, in consideration of the premises and their mutual covenants and agreements herein set forth, the parties hereto have agreed and do now agree as follows:

1.

Seller agrees to sell and deliver to Buyer at the points of delivery hereinafter described and Buyer agrees to receive, purchase and pay for all natural gas required to meet the needs of Buyer and Buyer's domestic, commercial and other customers within the City of Juarez, Mexico, and

(173)

its environs, subject to the provisions hereof; provided, however, that Seller shall not be obligated to sell and deliver natural gas hereunder in excess

173

of the amounts which, as hereinafter specified, it from time to time has available for delivery hereunder.

2.

The places of delivery of the natural gas deliverable hereunder (hereinafter referred to as the "points of delivery") shall be located as formerly in the City of El Paso, Texas, at the outlet of the measuring station on Seller's pipe line near the Stanton Street bridge and at the outlet of the measuring station on Seller's pipe line near the Santa Fe-Mexican Central Railway bridge, respectively, consistently with provisions of the Federal Power Commission authorizations and the Presidential Permits referred to above.

All gas delivered to Buyer hereunder shall be measured by means of meters of standard type which, together with all necessary appurtenant equipment in said measuring stations, shall be installed, operated and maintained by Seller. Such meters shall be subject at all reasonable times to check, test and inspection by Buyer in the presence of a representative of Seller; and all charts and records therefrom shall be preserved by Seller at least twelve (12) months and kept available for inspection and check by Buyer at all reasonable times during such period.

3.

Meters shall be kept in condition to register accurately all gas passing through same, but errors not exceeding three per cent (3%) in the registration of a meter shall not be considered as rendering the meter inaccurate within the meaning of this agreement. If for any reason a meter

(173)

should become inaccurate, or out of service or repair, so that the amount of gas delivered through same may not be accurately ascertained or computed by the reading thereof, the gas delivered during the period such meter is inaccu-

174

rate, out of service or out of repair, shall be estimated and agreed upon by the parties upon the basis of the best data available, using the first of the following methods that shall be feasible:

(a) By correcting the error, if the extent thereof is ascertainable by calibration test or mathematical calculation;

(b) By using the registration of Buyer's check meter, if one has been installed and is accurately registering, it being understood that Buyer may, at Buyer's option and expense, install check meters downstream of Seller's measuring equipment for the purpose of checking against the registration of the meters installed by Seller;

(c) By estimating the quantity of delivery by comparison with deliveries made during preceding periods under similar conditions and when the meters was registering accurately;

provided, however, that adjustments by the parties to correct for any inaccuracy in measurement shall be limited to the period during which the inaccuracy is definitely known to have existed and, if not definitely ascertainable, shall be limited to a period of thirty (30) days preceding discovery of the inaccuracy.

4.

For the purposes of this agreement, the unit of measurement of gas delivered and received hereunder shall be one

thousand (1,000) cubic feet (1 m.c.f.) measured at a pressure of eight (8) ounces above an assumed atmospheric pressure of 14.4 pounds per square inch (14.9 pounds per square inch absolute) and at a temperature of sixty degrees Fahrenheit (60° F.), and all measurements shall be computed to this standard. For the purpose of measuring, the natural gas deliverable hereunder shall be assumed to obey Boyle's Law; provided, however, that when a delivery pressure in excess of fifty (50) pounds per square inch gauge is provided for, correction for deviation from Boyle's Law shall be made in computing the volume of gas delivered, for the actual gauge delivery pressure at the meter, less fifty (50) pounds. The specific gravity of the gas shall be determined by proper tests made with Edwards type balance, or other mutually acceptable standard means, as often as may be found necessary in practice to insure accurate measurement; provided, however, that during such time as Seller shall be delivering hereun-

175

der only gas purchased by it from El Paso Natural Gas Company, the specific gravity of the gas shall be as determined by the average daily reading of the recording gravitometer installed and operated by said El Paso Natural Gas Company in connection with its sale of gas to Seller, and Buyer and Seller herein shall have the right jointly to check such gravity determinations by means of Edwards type balance or other mutually acceptable standard means.

5.

On or before the 5th day of each calendar month, Seller shall render to Buyer a statement setting out the amount of gas delivered to Buyer hereunder during the calendar month immediately preceding and the amount of the pay-

(175)

ment due therefor from Buyer to Seller; and said statement shall be due and payable on or before the 15th day of the month in which said statement is rendered.

6.

The price to be paid Buyer to Seller for gas delivered hereunder shall be as follows:

(a) For gas sold for industrial purposes a base rate of twenty-three cents (23¢) per m.c.f. plus fifty per cent (50%) of the excess, if any, above twenty-nine (29¢) per m.c.f. charged by Buyer to the ultimate consumers, including any minimum charge and any demand or readiness-to-serve or similar charge made by Buyer; provided, however, that if the aggregate price to be paid to Seller on account of the sale of gas by Buyer to any such industrial consumer is less than Twenty-Five Dollars (\$25) American money for any month, Buyer shall nevertheless pay Seller at least \$25.00 each month for each such industrial consumer.

(b) For gas sold or used for all other purposes, and lost or unaccounted for gas, thirty-three cents (33¢) per m.c.f.

Concurrently with the effectiveness hereafter of any increase authorized under the Natural Gas Act, as amended, in the price paid by Seller for the natural gas supplied by it under this agreement the price to be paid by Buyer to Seller hereunder shall be increased by the exact amount of such

176

increase in Seller's gas cost; provided (1) that Seller shall have given to Buyer written notice of the amount of such increase at least sixty (60) days in advance of its effectiveness and (2) that such increase shall not in any event go

into effect unless and until Seller may receive same under law and regulation applicable to it. In the case of industrial gas, price adjustments under this paragraph shall not increase the minimum payment of \$25.00 per month per industrial customer.

All payments to Seller shall be made at Seller's office in El Paso, Texas without any deduction for any import or other tax or charge of Mexico, or any other deduction whatsoever, and all payments shall be made in legal tender, lawful money of the United States of America. In computing the amounts to be paid to Seller under the foregoing provisions entitling Seller to a percentage of Buyer's charges in excess of the specified amount, the value for each calendar month of the Mexican peso in terms of the American dollar shall be determined by the final selling quotation of the peso given by the Bank of Mexico (Banco de Mexico) in such month of such exchange value. In the event the Bank of Mexico (Banco de Mexico) should at any time suspend or stop giving such quotations, then the last such quotation given before such suspension or stoppage shall thereafter control until such time as the Bank resumes giving such quotations.

Gas shall be deemed to have been sold by Buyer for industrial purposes only when same shall have been sold to ultimate consumers for use in manufacturing and industrial processes; provided, however, that in order to obtain the industrial rate from Seller on gas resold to any of Buyer's industrial consumers Buyer must first have delivered to Seller a copy of the gas

177

sale contract at the time in effect with such consumer. Buyer shall notify Seller in writing of the quantity of gas sold each month to each such industrial consumer not later than the first full business day of the month immediately

(177)

following; Buyer shall advise Seller in advance of each reading date for the meter(s) of each such consumer so that Seller may, if it so elects, provide its own meter readers to accompany Buyer's meter readers in reading such meters; and Buyer shall, if Seller so requests, furnish each month to Seller for Seller's inspection all charts and records from the meters of Buyer's said industrial consumers and Buyer's copies of its bills rendered to such customers, such charts and records and bills to be returned by Seller to Buyer within ten (10) days after receipt thereof.

7.

Seller will refund to Buyer the One Thousand Dollar (\$1,000.00) deposit heretofore made by Buyer as security for the payment of monies due from Buyer to Seller. Buyer agrees that in the event monies due to Seller hereunder shall be delinquent for a period as much as ten (10) days after the 15th day of the month in which they are payable, then Buyer will, on demand of Seller, forthwith deposit with Seller in lawful money of the United States of America a sum equal to the highest gas bill of Buyer during the preceeding twelve (12) month period, which sum shall secure the full and final payment of any and all charges hereunder, and Buyer does

178

hereby agree that if, as or when Buyer fails or refuses to make any such payments as herein provided, Seller shall have, and is hereby given, the right to appropriate and apply any and all of said deposited sum to the making of such payments.

8.

Seller agrees to exercise reasonable diligence and care to avoid any interruption or shortage of natural gas supply

(179)

hereunder, but Seller shall not be liable for any damage or loss which may be occasioned by any shortage or failure of gas supply resulting from shortage of production of gas wells or fields, breakage or accidents to lines or equipment, fires, strikes, riots, floods, earthquakes or, without limitation by the preceding enumeration, from any other cause or causes beyond the reasonable control of Seller. Seller shall only be bound to furnish natural gas to the full extent that it may be able to do so through the exercise of reasonable care and diligence in the procuring of natural gas through its gas purchase contract or contracts and in the transportation thereof through its own lines to the points of delivery, and for such period of time as natural gas is available; provided, however, that Seller will furnish, subject to the provisions hereof and insofar as possible, natural gas in sufficient quantities to meet the demands of Buyer's domestic consumers whenever same is available to Seller in sufficient quantities for meeting the demands of its own domestic consumers in the City of El Paso, Texas, and vicinity.

It is expressly agreed by Buyer that Seller may interrupt its service hereunder at any time for the purpose of making necessary alterations and repairs to its pipe lines or other facilities, but only for such time as may be reasonable and unavoidable, and Seller shall give to Buyer, except in case

179

of emergency, reasonable notice of its intention so to interrupt service hereunder and shall endeavor to arrange any such interruption so as to inconvenience Buyer and Buyer's customers as little as possible.

9.

This agreement shall become effective as of 12:00 midnight M.S.T. on August 1st, 1952, and shall remain in

(179)

effect, until April 1, 1955 and thereafter unless and until terminated as of such date or some later date by either party giving to the other at least sixty (60) days' written notice in advance of the date selected for termination; provided, however, that Buyer shall have the option of terminating this contract if Seller at any time sells or transfers to the City of El Paso, Texas, Seller's gas distribution system therein. Seller shall also have the right and privilege of terminating this agreement at any time upon thirty (30) days' notice in writing to Buyer if Buyer shall have been in default of any of its obligations hereunder for a period of sixty (60) days immediately prior to the giving of such notice.

Notwithstanding the foregoing provisions, Seller may by notice to Buyer reopen the price provisions of Section 6 hereof as of any date fixed in such notice at least sixty (60) days in the future, for the purpose of adjusting such price(s) to compensate Seller for increases thereafter sustained in its costs of rendering service hereunder (other than its gas supply cost increases already passed on or in the process of being passed on pursuant to Section 6), and the price increase(s) so made effective shall be applicable to gas delivered hereunder subsequent to the date specified in Seller's said notice; provided, that such increase(s) shall not in any event go into effect unless and until Seller may receive same under law and regulation applicable to it.

180

10.

This agreement shall be construed and interpreted and be performable in accordance with the laws of the State of Texas and the United States. At no time, however, shall Seller be under any obligation, nor shall Seller ever incur any liability by reason of its failure or refusal to perform any of the terms, covenants, conditions and stipu-

(181)

lations herein contained during any period of time when Buyer is in default in the performance of any of its obligations under this agreement.

11.

Seller shall not be held responsible for any damage or injuries to persons or property occurring by reason of the control or possession of natural gas after the same has been delivered to Buyer at the points of delivery hereunder, but Buyer shall be in exclusive control and possession thereof and responsible for any injuries or damage and any tax(es) or duty(ies) accruing thereafter.

12.

Concurrently with the effectiveness of this agreement all previous agreements and arrangements, whether formal or informal, and supplements and amendments thereof, between Seller and Buyer with respect to the sale and purchase of natural gas shall be superseded and restated in their entirety by this agreement; provided that Buyer shall not be relieved of any duty or obligation owing to Seller and Seller shall not be relieved of any duty or obligation owing to Buyer not previously discharged under such prior agreement(s).

13.

This agreement and the rights and duties of the parties hereunder shall be subject to all applicable provisions of law and all rules, regulations

181

and orders of duly constituted regulatory authorities in the United States of America having jurisdiction over Seller or the subject matter of this agreement.

All obligations of Seller hereunder shall be subject also to the provisions of the applicable tariff of El Paso Natural

(183)

Gas Company on file with Federal Power Commission and effective from time to time, and of the related service agreement between Seller and said El Paso Natural Gas Company.

14.

When not otherwise specified, notices under this agreement shall be deemed delivered when mailed postage prepaid in a sealed envelope addressed to Seller at El Paso, Texas, U.S.A., or to Buyer at Ciudad Juarez, Chihuahua, Republic of Mexico, as the case may be, or to such other address as either party shall by notice specify to the other for purposes of this agreement; provided that in cases of emergency notice shall be given by the quickest means feasible under the circumstances and confirmed by mail as above provided.

15.

This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their respective officers, thereunto duly authorized, in several counterparts, each of which shall be deemed an original, on this the day and year first above written.

SOUTHERN UNION GAS COMPANY

Attest:

By

Vice President

Seller

Secretary

JUAREZ GAS COMPANY, S.A.

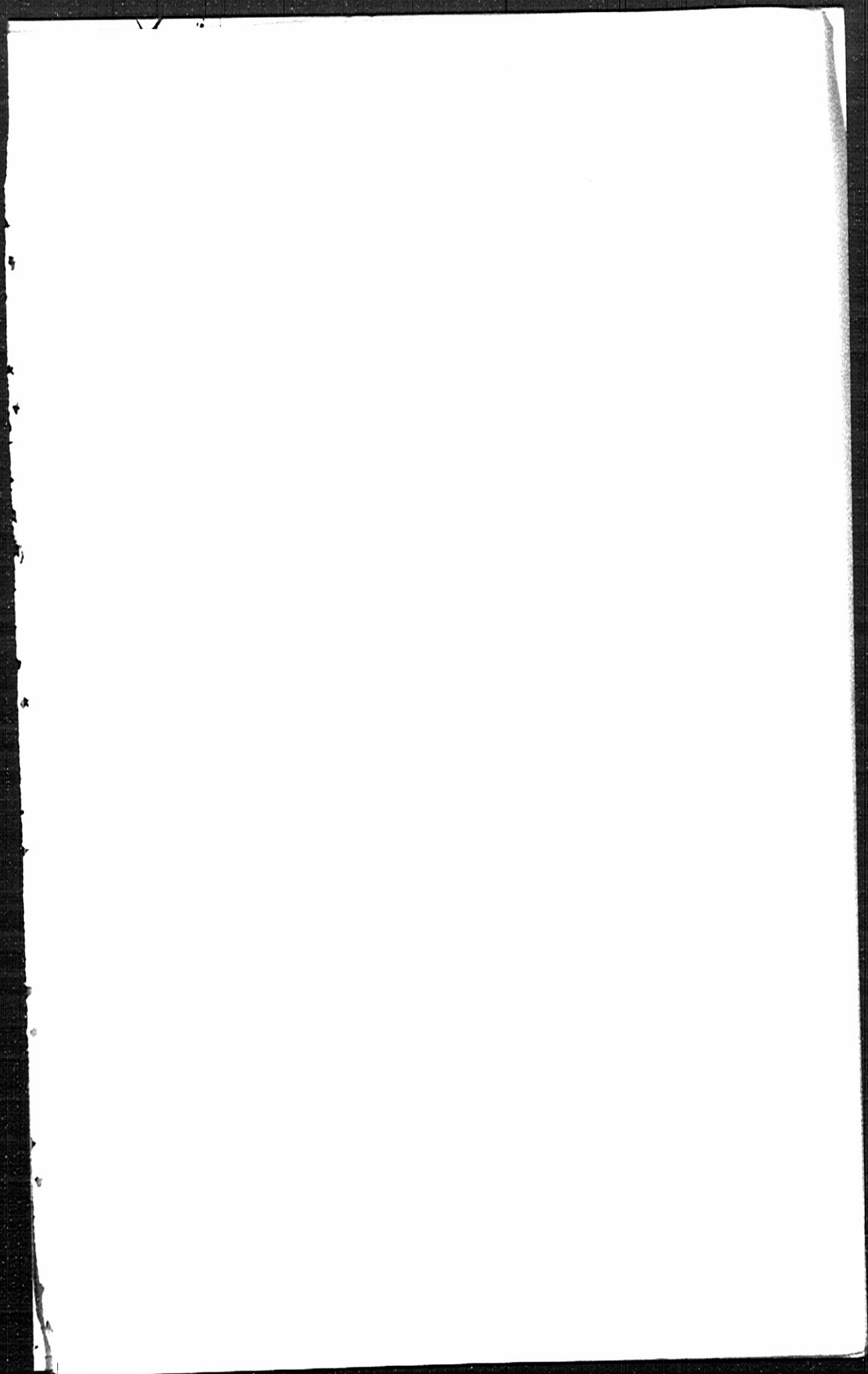
Attest:

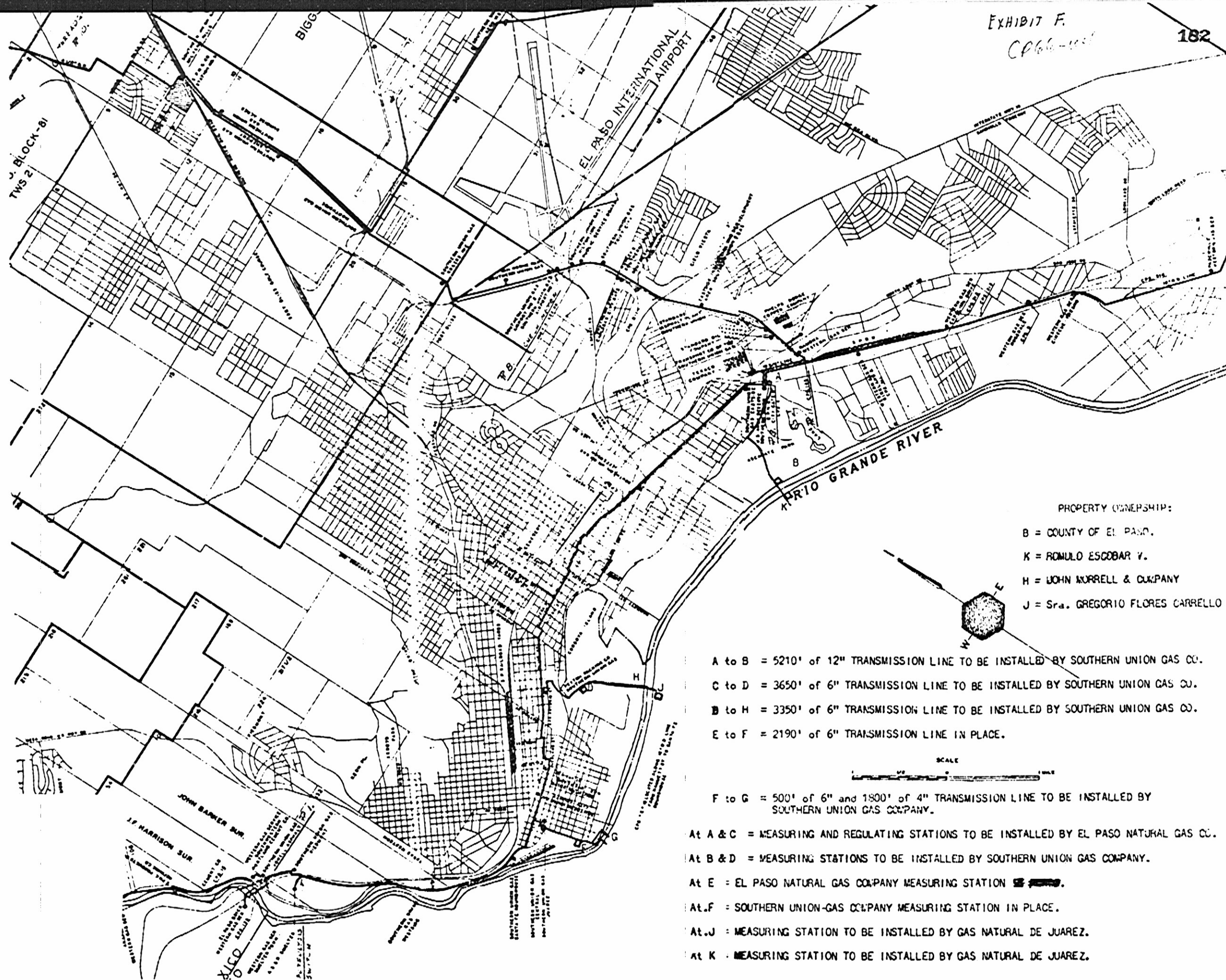
By

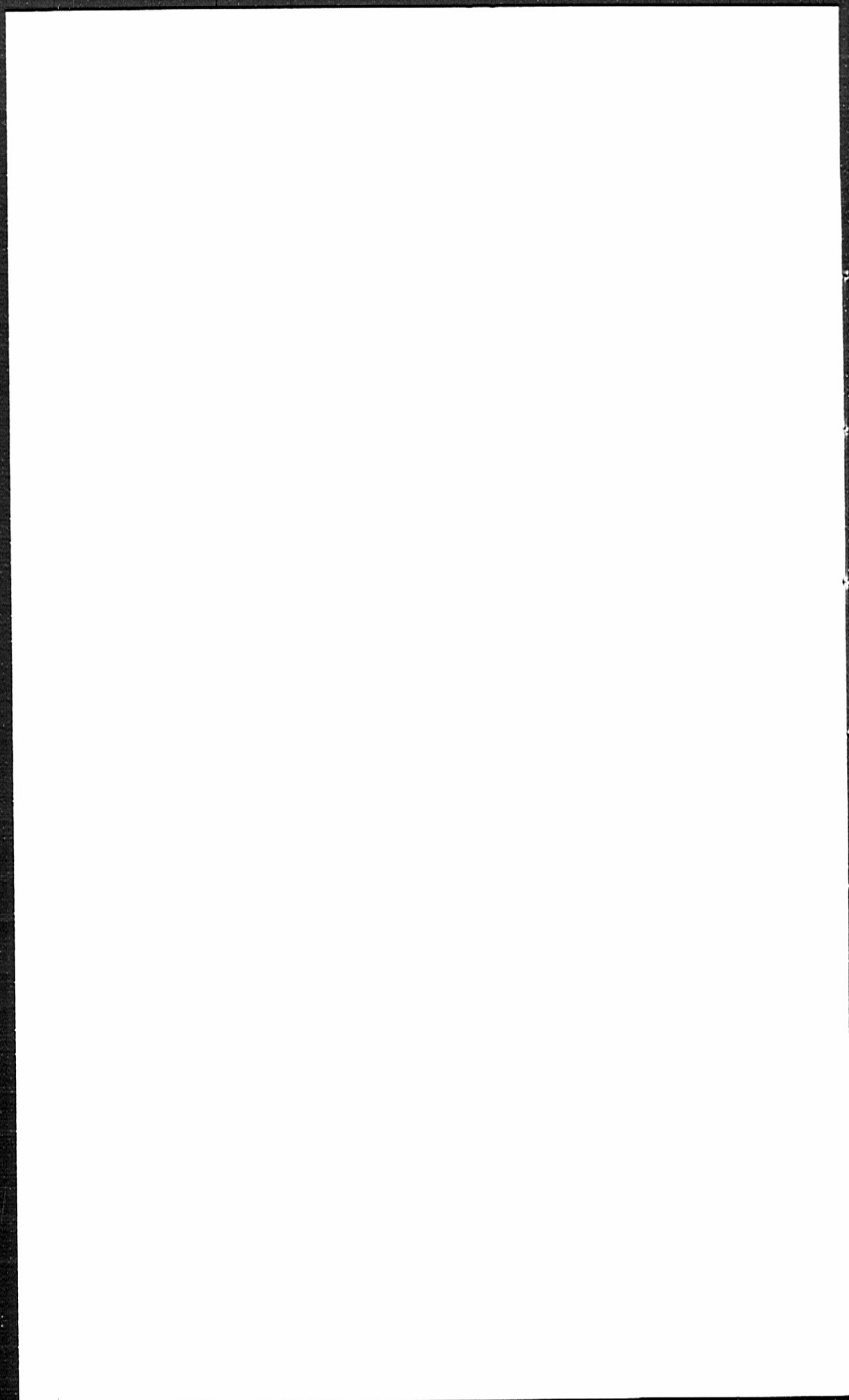
President

Buyer

Secretary







184

Exhibit X-1

ASSIGNMENT OF GAS PURCHASE CONTRACT

Know All Men By These Presents: That Southern Union Gas Company, a Delaware corporation (herein referred to as "Southern Union"), for a valuable consideration to it in hand paid by Del Norte Natural Gas Company, a Texas corporation (herein referred to as "Del Norte"), has transferred and assigned, and by these presents does transfer and assign, effective at of 8:00 A.M. on the day of, 1965, unto Del Norte, its successors and assigns, that certain Gas Purchase Contract dated June 17, 1952, by and between Southern Union Gas Company, as Seller, and Juarez Gas Company, S.A., as Buyer, covering sale and purchase of gas required to meet the needs of Juarez Gas Company, S.A., for its customers in the City of Juarez, Mexico;

And for the same consideration, Del Norte, by its acceptance of this assignment, expressly assumes and agrees to comply with all obligations of Southern Union under the aforesaid contract for sale and delivery of gas to Juarez Gas Company, S.A., after the effective date hereof, and to otherwise perform and discharge the duties and obligations of Southern Union that accrue or arise after the effective date of this assignment under the aforesaid Gas Purchase Contract.

To Have and to Hold the above described rights and privileges unto Del Norte, its successors and assigns forever.

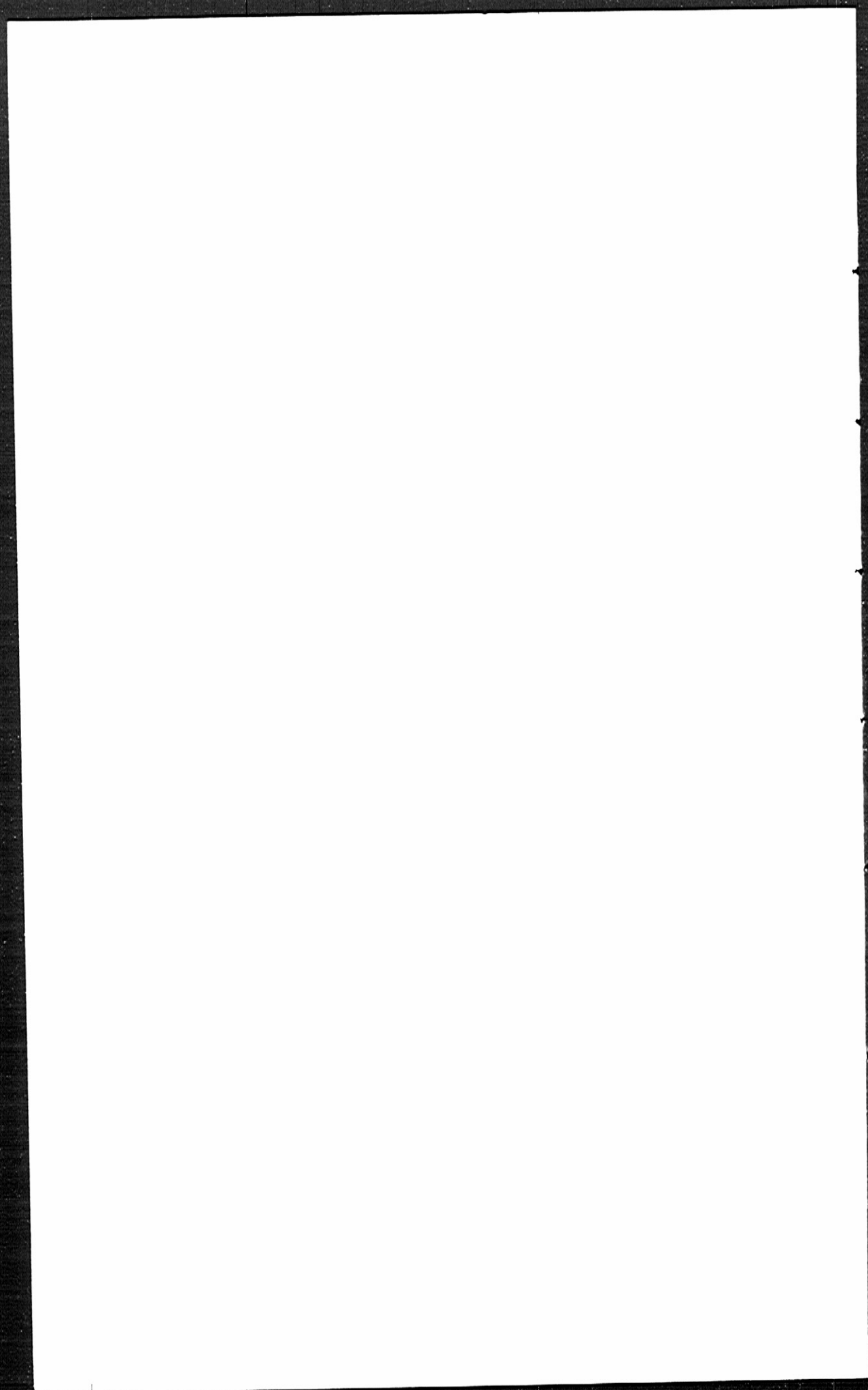
In Witness Whereof this Assignment of Gas Purchase Contract is executed on this day of, 1965.

SOUTHERN UNION GAS COMPANY

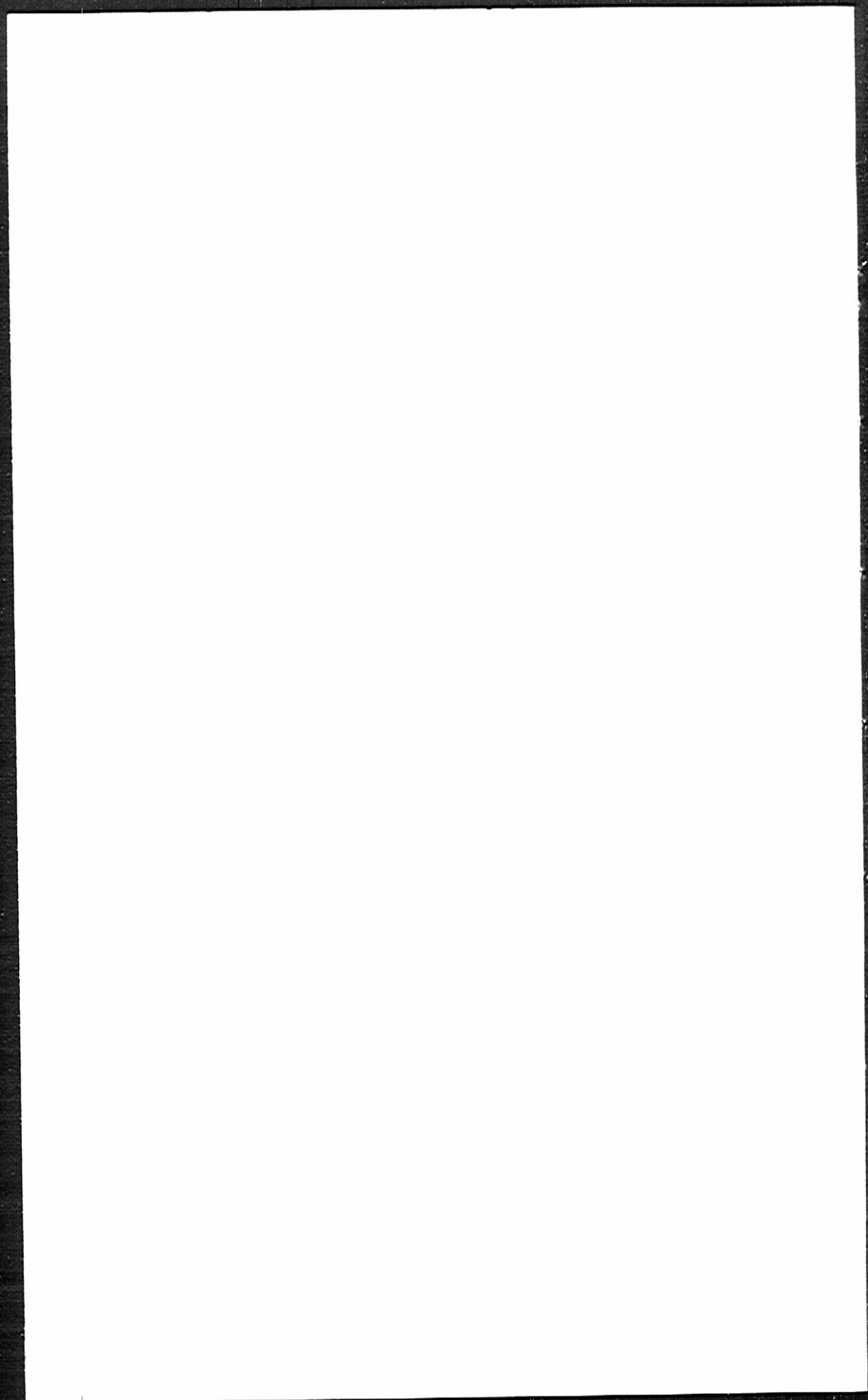
Attest:

Assistant Secretary

By
Vice President







UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

Docket No. CP66-106

In the Matter of
DEL NORTE NATURAL GAS COMPANY

APPLICATION FOR PRESIDENTIAL PERMIT

Comes now Del Norte Natural Gas Company (Applicant) and, in accordance with Executive Order No. 10485 and the applicable sections of the Commission's regulations under the Natural Gas Act, hereby applies for a Presidential Permit as hereinafter more particularly set forth.

In support hereof, Applicant would respectfully say and show to the Commission as follows:

(a)

(1) The exact legal name of Applicant is Del Norte Natural Gas Company.

(2) The name, title and post office address of the person to whom correspondence in regard to this application shall be addressed is:

John L. Harlan, President
Del Norte National Gas Company
1026 Southwest National Bank Building
El Paso, Texas

with carbon copy to:

187

Henry W. Simon
c/o Simon & Simon
Attorneys at Law
816 First National Building
Fort Worth, Texas 76102

(187)

(3) Applicant is a corporation organized and existing under the laws of the State of Texas. Applicant's principal office is located at El Paso, Texas. Applicant is not presently authorized to do business in any other state. Copies of Applicant's Articles of Incorporation and Bylaws comprise Exhibit A to an application filed by Applicant concurrently herewith, which Exhibit A is incorporated herein by reference.

The amount and class of Applicant's capital stock are as follows: Common stock—\$10.00 par value; authorized 100,000 shares; issued and outstanding 10,000 shares.

The nationality of Applicant's officers, directors and stockholders and the amount and class of stock held by each are as follows: Nationality—U.S.A.; Shares of Common Stock Held—10,000. The shareholders of this corporation are also officers and directors. There is no shareholder who is not an officer and director.

The names of the officers and directors and the names and offices of shareholders and the amount and class of stock held by each are as follows:

<i>Name</i>	<i>Address</i>	<i>Office</i>	<i>Number of Common Shares</i>
John L. Harlan	1026 Southwest Nat'l Bank Bldg. El Paso, Texas	President & Director	8750
John V. Uranga	P. O. Box 1321 El Paso, Texas	Vice President & Director	1250
188			
Henry W. Simon	816 First National Bldg. Fort Worth, Texas	Secretary- Treasurer & Director	None

(4) Neither Applicant nor its natural gas transmission lines or any property of Applicant is owned wholly or in part by any foreign government, or directly or indirectly

(189)

subventioned by any foreign government nor does Applicant have any understanding for such ownership or by subvention for any foreign government

(b)

A map showing the physical location and giving a full description of the facilities to be employed by the Applicant in the exportation of natural gas at the international boundary was submitted as Exhibit F to the application, filed by Applicant concurrently with this application, for authorization to export natural gas to the Republic of Mexico, which Exhibit F is incorporated herein by reference. Said map indicates with particularity the ownership of such facilities at or on each side of the border between the United States and Mexico.

(c)

Applicant has no contract with a foreign government or any private concern which in any way relates to the control or fixing of rates for the purchase, sale or transportation of natural gas which may serve in any way to restrict or prevent competing American companies from extending their activities.

Applicant will have only four contracts for the purchase or transportation of natural gas:

189

(1) A contract by and between Applicant, as seller, and Gas Natural de Juarez, S.A., as buyer, for the sale of such volumes of natural gas as are required by buyer's distribution system in the City of Juarez, Chihuahua, Mexico, and its environs. A copy of this contract was submitted as Exhibit D to the application filed by Applicant concurrently herewith for authorization to export natural

(189)

gas to Mexico, which Exhibit D is incorporated herein by reference.

(2) A gas purchase contract by and between Applicant as the assignee of Southern Union Gas Company, as seller, and Juarez Gas Company, as purchaser, dated June 17, 1952, a copy of which was filed with the Commission on July 1, 1952 (Docket No. G-513); said contract of June 17, 1952, is incorporated herein by reference. A copy of the assignment of this contract from Southern Union Gas Company to Applicant was submitted as Exhibit X-1 to the application filed by Applicant concurrently herewith, above mentioned, and said Exhibit X-1 is incorporated herein by reference.

(3) A service agreement for the purchase of natural gas by and between El Paso Natural Gas Company, as seller, and Applicant, as buyer, and a service agreement for the transportation of gas by and between El Paso Gas Transportation Corporation and Applicant, both dated October 7, 1965, copies being attached hereto as exhibits.

(4) A lease of natural gas facilities, dated September 28, 1965, by and between Del Norte Natural Gas Company and Southern Union Gas Company, a copy of same being attached hereto as an exhibit.

(d)

Neither Applicant nor any predecessor of Applicant has ever been granted any landing license or permit by a foreign government or by any of

190

its agencies in connection with the exportation or importation of natural gas.

(e)

Applicant is filing concurrently herewith, pursuant to Section 3 of the Natural Gas Act, an application for an order authorizing Applicant to export natural gas from the United States to the Republic of Mexico. Said application, to the extent applicable, is incorporated herein by reference.

On August 23, 1944, Franklin D. Roosevelt, President of the United States, issued a Presidential Permit to the Southern Union Gas Company for the operation and maintenance at the border of the United States of facilities for the exportation of natural gas to the Republic of Mexico. This permit is numbered G-513, and Southern Union Gas Company, as permittee, accepted all the provisions, conditions and requirements of said Presidential Permit on November 20, 1944. This Presidential Permit, to the extent applicable, is incorporated herein by reference, because, in the event this application is granted, Applicant proposes to continue the operation for exportation of natural gas to the Republic of Mexico which is being presently carried on by Southern Union Gas Company pursuant to said Presidential Permit.

A portion of the facilities authorized by said Presidential Permit will be continued by Applicant and additional facilities will be constructed at the border and will be maintained and operated by Applicant for the exportation of natural gas to the Republic of Mexico, all as described in this application and in the application filed concurrently herewith for an order authorizing Applicant to export natural gas from the United States to the Republic of Mexico.

(191)

191

Wherefore, Applicant prays that the issuance of the permit hereinabove requested be granted, and for such other and further relief as the Commission may find proper.

Respectfully submitted,

DEL NORTE NATURAL GAS COMPANY

Attest:

By
Secretary

By
President

* * * * *

205

SERVICE AGREEMENT

This agreement, made and entered into this 7th day of October, 1965, by and between El Paso Gas Transportation Corporation, a Delaware corporation (herein called "Seller") and Del Norte Natural Gas Company, a Texas corporation (herein called "Buyer");

Whereas, Seller owns and operates a natural gas transmission system and is engaged in the transportation of natural gas within and adjacent to the City of El Paso, Texas, and

Whereas, Buyer proposes to lease and operate a natural gas transmission system and related facilities for the transportation, export and sale of natural gas to Gas Natural de Juarez, S.A. and Juarez Gas Company, S.A. (herein collectively called "Distributors") for resale and general distribution to consumers thereof situated in Ciudad Juarez, Chihuahua, Mexico, and environs, and

Whereas, under that certain Service Agreement of even date herewith by and between Buyer and El Paso Natural

Gas Company (herein called "El Paso"), Buyer has obtained a supply of natural gas from El Paso for transportation, export and sale to Distributors, which supply is deliverable to Buyer at a point distant from but connected with Buyer's said transmission system by Seller's said transmission system, and

Whereas, Buyer and Seller desire to arrange for the transportation by Seller for the account of Buyer of Buyer's said natural gas supply obtainable from El Paso, as hereinafter set forth;

Now, Therefore, This Agreement Witnesseth, that the parties hereto, in consideration of the covenants and payments herein set forth,

206

have mutually covenanted and agreed and do mutually covenant and agree as follows:

Article I

Gas to be Transported and Delivered

Seller agrees to receive for account of Buyer and to transport and delivery to the Buyer at the points of delivery, designed in Article II hereof, along the pipeline system of the Seller, and Buyer agrees to deliver or cause to be delivered to the Seller and to withdraw from the pipeline system of the Seller under the terms and subject to the conditions herein set forth, the following quantities of natural gas:

Such quantities of natural gas as Buyer may purchase and receive from El Paso under the said Service Agreement of even date herewith by and between Buyer and

(206)

El Paso, receipt by Seller of such quantities to be made at the pressure and at the delivery point designated therein; provided, however, that Seller shall not be required to deliver to Buyer and Buyer shall not be entitled to receive from Seller natural gas in excess of those quantities set forth below at the points of delivery indicated and more particularly described in Article II below:

Del Norte No. 1: 12,400 Mcf

Del Norte No. 2: 2,600 Mcf

Del Norte No. 3: 4,900 Mcf

Article II

Points of Delivery and Assumed Atmospheric Pressure

The points of delivery of natural gas deliverable hereunder shall be on the outlet side of the measuring station of the Seller, at or near the following points, and the assumed atmospheric pressure at each such point shall be.

Location	Assumed Atmospheric Pressures
1. Del Norte No. 1—Located in Tract 16, Block 21, Ysleta Grant, El Paso County, Texas	12.8
2. Del Norte No. 2—Located on the El Paso Gas Transportation Corporation City Main Line, in the vicinity of Dallas and San Antonio Streets, City of El Paso, Texas.	12.8
3. Del Norte No. 3—Located at the end of the 10 $\frac{3}{4}$ " and 8 $\frac{5}{8}$ " Branch Line which is 844.5 feet south of Engineering Station 1218 + 88 on the El Paso Gas Transportation Corporation City Main Line, in the alley adjacent to Third Street between Chihuahua and Santa Fe Streets, City of El Paso, Texas	12.8

It is understood that, by mutual consent of the parties hereto, other and/or additional points of delivery may be agreed upon.

Article III

Delivery Pressure

Deliveries of natural gas hereunder shall be at gauge pressures at the points of delivery as may there exist from

(207)

time to time but not less than two hundred fifty pounds per square inch at the Del Norte No. 1 delivery point and not less than eight-five pounds per square inch at the Del Norte No. 2 and Del Norte No. 3 delivery points.

208

Article IV

Prices and Rate Schedules

Buyer shall pay Seller for the transportation of natural gas and for services rendered hereunder in accordance with Seller's Rate Schedule T-1 on file with and subject to the jurisdiction of the Federal Power Commission and lawfully in effect from time to time. The aforesaid rate, now on file with said Commission, shall be the rate to be paid by Buyer to Seller under this agreement until same is changed in accordance with lawful requirements. This agreement in all respects is subject to the provisions of the applicable General Terms and Conditions attached to the rate schedule filed with the Federal Power Commission, all of which are by reference made a part hereof.

Article V

Term

This agreement shall continue in full force and effect from and after its effective date as designated by the Federal Power Commission until December 31, 1980, and thereafter, from year to year, subject, however, to termination by either party hereto upon expiration of said term or upon any subsequent anniversary thereof by written notice given no less than twelve (12) months in advance by either party to the other so stating. This agreement must be filed with the Federal Power Commission, pursuant to the Natural Gas Act, and accordingly cannot become fully effective until the same takes effect pursuant to said Natural Gas Act.

209

Article VI

Cancellation of Prior Contracts

This agreement supersedes and cancels as of the effective date hereof the following contracts between the parties hereto:

None.

There shall be exempted from the foregoing all indebtedness incurred by either party to the other under the terms of any such agreement executed prior to the effective date hereof:

Article VII

Notices

Notices to be given hereunder shall be deemed sufficiently given and served when and if deposited in the United States mail, postage prepaid and registered, addressed to Seller at El Paso, Texas, or to the Buyer at 1026 Southwest Center, El Paso, Texas, 79901, as the case may be, or to such other address as either party shall respectively hereafter designate in writing.

Article VIII

Successors and Assigns

The terms, provisions, conditions and requirements of the FPC Gas Tariff and executed Service Agreement shall extend, inure to and bind the respective successors and assigns of the parties hereto.

Article IX

Interpretation

The interpretation and performance of this agreement shall be in accordance with the laws of the State of Texas.

(210)

210

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly signed in several counterparts by their respective officers, the day and year first above written.

EL PASO GAS TRANSPORTATION
CORPORATION

By s/ H. F. Steen
Vice President

Attest:
s/ A. C. Martch
Assistant Secretary

DEL NORTE NATURAL GAS
COMPANY

By s/ John L. Harlan
President

Attest:
s/ Henry W. Simon
Secretary

211

Lease of Natural Gas Facilities

THIS AGREEMENT, made and entered into this 28th day of September, 1965, by and between DEL NORTE NATURAL GAS COMPANY, a Texas corporation (herein referred to as "Del Norte") and SOUTHERN UNION GAS COMPANY, a Delaware corporation (herein referred to as "Southern Union"),

WITNESSETH THAT:

1. *Gas Sales Contract and Government Approvals of Mexico.* Del Norte represents to Southern Union that Del Norte holds a valid contract for a firm term of fifteen (15) or more years from this date, providing for sale by Del

Norte and the purchase by Gas Natural de Juarez, S.A. (herein called "Natural de Juarez") of all natural gas required from time to time by Natural de Juarez for distribution and resale to consumers in the City of Juarez, Mexico, and environs. The term "City of Juarez, Mexico, and environs" (hereinafter referred to as "Juarez" for brevity) is defined as the area located within and around the City of Juarez, Mexico, in which Natural de Juarez or Juarez Gas Company, S. A., or others, shall from time to time be operating natural gas distribution facilities for sale and distribution of natural gas.

2. *United States Governmental Approvals.* Upon mutual execution hereof by the parties, Del Norte shall promptly—

(a) Make and diligently pursue its request to El Paso Natural Gas Company (herein called "El Paso") to obtain all consents and authorizations necessary to permit sales and delivery of natural gas by El Paso to Del Norte at the delivery points on El Paso's pipeline facilities, described in Exhibit "A" hereto attached and made a part hereof, for exportation to the Republic of Mexico. Del Norte shall notify Southern Union of the filing of such application by El Paso and of any and all Federal Power Commission actions and dispositions made upon that application.

212

(b) Submit and thereafter diligently prosecute to a final disposition its application to the Federal Power Commission for authorization to export natural gas that it receives from El Paso to the Republic of Mexico.

If El Paso and Del Norte, respectively, have not obtained all such necessary consents and authorizations prior to twelve (12) months from the date of this Lease of Natural Gas Facilities, either party may thereafter terminate this

(212)

agreement upon written notice given to the other not less than sixty (60) days prior to the effective termination date specified in such notice; provided, however, that such notice will not cause termination of this agreement if the governmental authorizations be granted prior to the termination date specified in such notice.

3. *Construction of Facilities.* When Del Norte and El Paso, respectively, have received the requisite governmental consents and authorizations specified in the foregoing section, Southern Union will commence and thereafter prosecute such rearrangement of its existing gas distribution facilities and construction of new gas pipelines as may be necessary to build and complete gas pipelines (conforming with applicable specifications set out in Exhibit "A" hereto) that will connect each point of El Paso gas delivery to Del Norte listed in Exhibit "A" to gas export facilities of Del Norte at the points on or near the United States international boundary listed in Exhibit "A" generally along the routes depicted on the map or plat hereto attached as Exhibit "B". Thereafter upon written request of Del Norte and after requisite governmental consents and approvals have been obtained, Southern Union will build and complete additional gas pipelines at mutually agreeable locations, each party hereby agreeing not to unreasonably withhold its agreement to a particular location proposed by the other, that will connect a point of El Paso gas delivery to Del Norte with a gas export facility of Del Norte at or near the international boundary

213

between the United States and Mexico but when pipelines of Southern Union that connect points of El Paso gas delivery to Del Norte with export facilities of Del Norte (including those specified in Exhibits "A" and "B" hereto) shall aggregate either six in number or four miles in lineal length, Southern Union shall not be required to build or

complete additional connecting pipelines. Del Norte shall cooperate with Southern Union in acquisition by Southern Union of any necessary right-of-way easements and other land usage authorizations that may be necessary for construction, operation, and maintenance of such connecting pipelines. The connecting gas pipelines that are to be completed by Southern Union (herein called "Southern Union Pipelines") shall be and remain, during the term of this agreement, except to the extent otherwise agreed to in writing by the parties, severed and separated from other similar facilities of Southern Union to the end that gas volumes delivered by El Paso to Del Norte into the Southern Union Pipelines may not commingle with gas delivered by El Paso to Southern Union for distribution and resale by Southern Union through other pipelines or facilities. Gas export facilities at points on or near the United States international boundary listed in Exhibit "A" and at other termini of the Southern Union Pipelines and all facilities necessary to permit exportation and delivery of gas to Natural de Juarez and to the Juarez Gas Company, S. A., except only to the extent hereinafter provided, will be provided and maintained by Del Norte.

4. *Lease of Facilities.* Subject to the other terms and provisions herein contained, Southern Union hereby leases and lets exclusively unto Del Norte the Southern Union Pipelines for and during the term commencing upon the date of first delivery of gas by Del Norte to Natural de Juarez, after receipt by El Paso and Del Norte of necessary governmental consents and authorizations and ending upon the effective date of expiration or termination of this agreement, and the leased facilities will be used

exclusively by Del Norte for conveyance of gas from points on pipelines of El Paso to facilities of Del Norte located

(214)

on or near the international boundary of the United States and used for export, delivery and sale of gas for distribution and resale in Juarez. The Southern Union Pipelines will be operated by Del Norte and will be maintained in good repair and operating condition by Del Norte, all at the sole cost and expense of Del Norte. In all work on the Southern Union Pipelines, Del Norte shall—

(a) Give Southern Union notice of excavation in streets, alleys, bridges or parks of the City of El Paso sufficiently in advance of the work to permit advance notification by Southern Union of the El Paso City Engineer of the proposed work; and

(b) Comply with reasonable rules and regulations of the City of El Paso that are applicable to the work; and

(c) Make all excavations and opening in El Paso streets, alleys, bridges or parks in such manner as to give the least inconvenience to the public and restore all such excavations and openings to their original condition, as nearly as practicable, promptly after completion of the work; and

(d) Comply with present or future El Paso City Building Codes, plumbing and gas fitting codes and with other applicable and valid ordinances; and

(e) Not interfere with any water, sewer, electric, or telephone lines in El Paso now or hereafter in streets or alleys occupied by the El Paso pipelines and be bound by the decision of the City Council respecting conflicting rights of city franchise holders.

Del Norte shall indemnify and hold Southern Union harmless from and against all liability for injury to or death of persons and damage to property arising out of maintenance or operation of the Southern Union Pipelines.

215

The work of raising, lowering, relaying or relocating of the Southern Union Pipelines, when required by the City of El Paso under the El Paso franchise of Southern Union or when required to accommodate with change in grade or location of a public road, street, highway or alley shall be performed by Southern Union at its expense and without charge to Del Norte, and all payments by governmental authority as reimbursement for such work will be paid to Southern Union and Del Norte shall be entitled to no portion thereof. Upon completion of the work the Southern Union Pipelines, as raised, lowered, relaid or relocated will remain subject to this agreement, and all surplus pipe and related property that is removed or salvaged in the course of such work will be the sole property of Southern Union, subject to any disposition by and for the sole account of Southern Union as it deems appropriate.

5. *Assignment of Contract.* Upon and effective as of commencement by Del Norte of gas deliveries to Natural de Juarez for distribution and resale to consumers in Juarez but not prior to receipt by Del Norte and El Paso, respectively, of the governmental authorizations mentioned in Section 2 hereof, Southern Union will execute and deliver to Del Norte an assignment of that certain Gas Purchase Contract dated June 17, 1952, between Southern Union Gas Company, as Seller, and Juarez Gas Company, S.A., as Buyer, as the same be amended, modified, extended or superseded by a new contract at that time, and in such assignment Del Norte will expressly assume and agree to comply with all obligations of Southern Union under such contract for sale and delivery of gas to Juarez Gas Company, S.A. and to otherwise perform and discharge all duties and obligations of Southern Union that accrue or arise after the effective date of such assignment. Upon expiration or termination of this Lease of Natural Gas

(215)

Facilities for any cause and notwithstanding any terms and provisions of the Southern Union assignment to Del Norte, the aforesaid June 17, 1952 Gas Purchase

216

Contract, as the same be amended, modified or extended at that time or any new superseding contract that may be then in effect between Del Norte and Juarez Gas Company, S.A., or the successors in interest to the gas distribution system of Juarez Gas Company, S.A., will, if so requested by Southern Union in written notice to Del Norte, be transferred and assigned to Southern Union insofar as the same covers sales of gas to meet the requirements of the present gas distribution system of Juarez Gas Company, S.A. effective as of the date of expiration or termination of this agreement. Del Norte agrees that it will execute no modification, amendment or superseding contract with Juarez Gas Company, S.A. or its successors in interest to its Juarez gas distribution system, which substantially changes or modifies any of the terms and provisions of the aforesaid June 17, 1952, Gas Purchase Agreement without the prior written consent of Southern Union, which consent shall not be unreasonably withheld.

6. *Chamizal Area.* Portions of the Southern Union Pipelines hereby leased to Del Norte are or will be located in the Chamizal Area that is to be transferred to the United Mexican States pursuant to the American-Mexican Chamizal Convention (the portions of such pipelines that are or will be in the Chamizal Area being herein referred to as the "Southern Union Chamizal Lines"), and the Southern Union Chamizal Lines shall be a part of the Southern Union Pipelines hereby leased under other terms and provisions hereof to Del Norte; provided, however, that—

(a) Southern Union may, without concurrence or consent of Del Norte, take any and all steps deemed

(217)

appropriate by Southern Union to obtain compensation or reimbursement from the United States for the Southern Union Chamizal Lines under the American-Mexican Chamizal Convention Act of 1964 and other applicable laws, and all compensation or reimbursement paid to

217

Southern Union for or on account of the Southern Union Chamizal Lines, whether by voluntary settlement, eminent domain award, or otherwise, will be the sole property of Southern Union with Del Norte entitled to no part thereof.

(b) Southern Union may, without concurrence or consent of Del Norte, make such contracts and agreements with the United States of America, for relocation or removal of the Southern Union Chamizal Lines from the Chamizal Area upon such terms and conditions as Southern Union considers appropriate.

(c) Southern Union may, after expiration of thirty (30) days next succeeding written notice thereof to Del Norte and without consent or concurrence of Del Norte, take up, salvage, remove or relocate the Southern Union Chamizal Lines without any obligation to rebuild or replace the same, and dispose of such lines for the sole account of Southern Union in such manner and upon such terms as Southern Union shall deem appropriate; and thereafter the Southern Union Chamizal Lines shall constitute no part of the Southern Union Pipelines under lease to Del Norte.

7. *Rental.* Del Norte shall pay to Southern Union, as rental for the Southern Union Pipelines, an amount computed upon the volumes of gas that are delivered by El Paso and other gas suppliers to Del Norte and its affiliates

(217)

for exportation, delivery and sale for distribution and resale in Juarez at the following rates:

First 65,000 M.C.F. during each calendar month, 10¢ per M.C.F.

Next 50,000 M.C.F. during each calendar month, 3¢ per M.C.F.

Next 30,000 M.C.F. during each calendar month, 2¢ per M.C.F.

All in excess of 145,000 M.C.F. during each calendar month, 1¢ per M.C.F.

Minimum Annual Rental—\$84,000.00 per calendar year.

218

provided, however, that after any increase in the rates of El Paso for gas delivered to Del Norte and for so long only as Del Norte shall be prohibited by lawful governmental regulatory action on behalf of either United States or the Republic of Mexico or by duress of business compulsion from increasing its rates for gas delivered to meet the requirements of the present gas distribution system of Juarez Gas Company, (S.A. by an amount per M.C.F. equal to the amount per M.C.F. of increase in El Paso rates, the foregoing amount per M.C.F. for the first 65,000 M.C.F. per month will be reduced by such amount per M.C.F. as will equal one-half ($\frac{1}{2}$) the amount per M.C.F. by which the amount per M.C.F. of increase in El Paso rates for gas delivered to Del Norte shall exceed the amount per M.C.F. of increase in Del Norte rates for gas to meet the requirements of the present Juarez Gas Company, S.A. distribution system. When amounts are refunded by El Paso to Del Norte because of rates paid for prior gas deliveries, the rates of El Paso for gas delivered to Del Norte will be recomputed to give effect to the refund and, Del Norte shall make such payment

to Southern Union as may be necessary to correct prior reduction of rental payments to conform with the rates of El Paso as recomputed to give effect to the refund.

In the event that Juarez Gas Company, S.A., or the successor in interest to the present gas distribution system of Juarez Gas Company, S.A., should commence the utilization of gas to meet all the requirements of the present distribution system from sources other than gas furnished directly to it by Del Norte, or one or more of its affiliates, or indirectly through use of gas supplied by Del Norte, or any one or more of its affiliates, to Natural de Juarez or others, Del Norte shall give Southern Union written notice thereof, and thereafter for so long only as Juarez Gas Company, S.A. or the successor in interest to the present gas distribution system of Juarez Gas Company, S.A. does not utilize gas supplied to it either directly or indirectly by Del Norte or any one or more of its affiliates to meet the requirements of such distribution system, the rental for the Southern Union Pipelines to be paid by Del Norte to Southern Union shall be an amount computed upon the volumes of gas that are delivered by El Paso and other

219

gas suppliers to Del Norte and its affiliates for exportation, delivery and sale for distribution and resale in Juarez at the following rates:

First 50,000 M.C.F. during each calendar month, 3¢ per M.C.F.

Next 30,000 M.C.F. during each calendar month, 2¢ per M.C.F.

All in excess of 80,000 M.C.F. during each calendar month, 1¢ per M.C.F.

Minimum Annual Rental—\$24,000.00 per calendar year.

(219)

Upon any cessation of use by Juarez Gas Company, S.A. or its successors in interest in the present gas distribution system of Juarez Gas Company, S.A. of gas supplied to it directly or indirectly by Del Norte, or any one or more of its affiliates, the June 17, 1952, Gas Purchase Contract theretofore assigned to Del Norte by Southern Union as the same be amended, modified or extended at that time or any new superseding contract that may be then in effect between Del Norte and Juarez Gas Company, S.A. or any successors in interest to the present gas distribution system of Juarez Gas Company, S.A. will, if so requested by Southern Union in written notice to Del Norte, be transferred and assigned to Southern Union insofar as the same covers sales of gas to meet the requirements of the present Juarez Gas Company, S.A. distribution system, and the Southern Union Pipelines then being used by Del Norte solely for delivery and export of gas to meet the requirements of the present Juarez Gas Company S.A. distribution system will revert to Southern Union free from the provisions of this agreement.

The minimum Annual Rental for the year in which Del Norte commences sale and delivery of gas to Natural de Juarez will be reduced to the same proportion thereof that the number of days remaining in the calendar year after such commencement of gas delivery bears to 365, and the Minimum Annual Rental for the year in which this contract lawfully terminates will be reduced to the same proportion thereof that the number of days in the calendar year preceding such termination bears to 365. The amount of the Minimum Annual Rental for any year during which a change in the amount thereof shall become effective shall be determined by multiplying each of the respective amounts by the number of days in the year during which the same was in effect and by dividing the

sum of the products so obtained by 365. Amounts by which the aggregate of monthly rentals becoming due

220

Southern Union during any calendar year on gas volumes delivered to Del Norte and affiliates for exportation, delivery and sale for distribution and resale in Juarez shall fail to equal the minimum rental for such year will be paid to Southern Union within twenty-five (25) days after the end of such calendar year but any such payment for the year in which this contract lawfully terminates will be paid to Southern Union within twenty-five (25) days after the effective date of termination.

All payments to Southern Union shall be in United States currency, without regard to changes in rates of exchange affecting equivalent values in terms of Mexican money.

The term "Del Norte and affiliates" shall include any one or more of the following:

(a) Del Norte and all corporations in which a majority of the voting stock is owned or controlled directly or indirectly by Del Norte or owned or controlled directly or indirectly by a corporation which owns or controls directly or indirectly a majority of the voting stock of Del Norte, and

(b) All unincorporated firms and businesses that are owned or controlled, directly or indirectly, by any of the corporate officers or directors of Del Norte.

8. *Tax Reimbursement.* The rentals herein specified to be paid to Southern Union are subject to all taxes which may be now or hereafter payable under the "Limited Sales, Excise and Use Tax Act" of the State of Texas and amendments thereof, and to any new, increased or addi-

(220)

tional taxes (other than ad valorem, income or corporate franchise), licenses, fees or charges levied, assessed or made by any governmental authority upon any act of Southern Union in performance of this agreement or upon the rentals or payments accruing to Southern Union hereunder, and said taxes and any such new, increased or additional taxes shall be added to

221

the rentals due Southern Union hereunder and be borne by Del Norte.

9. *Measurement.* The unit of gas volume for all purposes hereunder (even though different units of gas volume be used by Del Norte for sales of gas for exportation, sale, distribution and resale in Juarez) shall be one (1) cubic foot of gas at a base pressure of 14.9 pounds p.s.i.a. and a temperature of 60° Fahrenheit, and the readings and registrations of metering equipment will be computed into such units in accordance with specifications, rules and regulations and tariffs of El Paso that are applicable to measurement of gas on file and in effect with the Federal Power Commission from time to time. The term "M.C.F." as used herein shall mean 1,000 cubic feet of gas.

If, by reason of any valid law, order or regulation, there shall be prescribed a basis for measurement or computation of gas volumes differing from that herein set forth, then the applicable rates per M.C.F. herein set forth shall be forthwith adjusted and corrected to compensate for the change thus required for basis of measurement and computation of gas volumes, it being the intention of the parties that no required change in the basis of measurement or computation of gas volumes shall affect in any way the total amount that is to be paid by Del Norte to Southern Union hereunder.

10. *Meters.* All gas delivered by El Paso and other gas suppliers to Del Norte and its affiliates for exportation, delivery and sale for distribution and resale in Juarez shall be measured by gas meters and appurtenant measurement equipment that are installed, maintained and operated by El Paso and other gas suppliers for measurement of such gas at or near each point of gas delivery to Del Norte and its affiliates, and gas volume measurements and computations of each such supplier of gas to Del Norte, corrected for temperature and pressure variations from those herein specified, will be determinative of the obligations of the parties

222

under this agreement; provided, however, that if El Paso or other supplier of gas to Del Norte does not for any reason install, operate and maintain standard type meters and appurtenant measurement equipment at each point of gas delivery to Del Norte and its affiliates so as to be capable of accurate measurement of gas deliveries to Del Norte and its affiliates at such point, Southern Union, upon written notice to Del Norte, may install, maintain and operate standard type meters and appurtenant measurement equipment on the facilities of either Southern Union or Del Norte and its affiliates to accurately measure and record volumes of gas that are delivered to Del Norte and its affiliates at such delivery point, and gas volumes delivered to Del Norte and its affiliates at such delivery point will be computed from readings and registrations from Southern Union's meters and appurtenant measurement equipment for so long as Southern Union may elect to maintain its measurement facilities at that location.

11. *Statements and Payment.* On or before the 25th day of each calendar month Del Norte shall submit to Southern Union a statement showing the volumes of gas deliv-

(222)

ered by El Paso and other suppliers to Del Norte and its affiliates during the preceding calendar month for exportation, delivery and sale for distribution and resale in Juarez, together with the remittance of Del Norte in payment of amounts becoming due to Southern Union during the month covered by such statement in accordance with the provisions hereof. Should Del Norte fail to pay or tender any amount to Southern Union within thirty (30) days after such amount shall be due as aforesaid, interest shall accrue on such past-due amount at the rate of six per cent (6%) per annum from the due date thereof to the date of payment; provided, however, that interest will not accrue upon amounts in bona fide dispute when timely payment shall have been made by Del Norte of the portion of all monthly payments that are not in bona fide dispute.

Whenever any amount due Southern Union, to the extent not in bona fide dispute, remains unpaid for sixty (60) or more days after payment

223

thereof shall have become due, Southern Union may, cumulative of and in addition to all other rights and remedies available to it, resume possession of and operate the Southern Union Pipelines as the agent of Del Norte until such time as all amounts due to Southern Union and not in bona fide dispute shall have been paid to Southern Union. During all periods of operation of the Southern Union Pipelines by Southern Union as agent of Del Norte, Southern Union shall have the right to collect and receive directly from the purchaser all proceeds of sale of gas by Del Norte for distribution and resale in Juarez, each and all such purchasers being entitled to rely upon Southern Union's statements concerning the existence and amount of payment default by Del Norte without necessity of in-

demnification or bond of Southern Union, and to apply such sales proceeds first to payment of amounts due and owing by Del Norte to El Paso for gas, second to cost and expense incurred by Southern Union in operation and maintenance of the Southern Union Pipelines, delivery of gas to purchasers for distribution and resale in Juarez and otherwise performing obligations of Del Norte hereunder, and third to discharge of amounts due Southern Union hereunder with all such credits applied first to accrued interest and then to the earliest accruing amounts due Southern Union. If the purchasers of gas for distribution and sale in Juarez should fail or refuse to make payment to Southern Union when Southern Union is entitled thereto, Southern Union may exercise all rights of termination or suspension of gas deliveries that are available to Del Norte to enforce payment to Del Norte for gas deliveries for distribution and sale in Juarez. Resumption of possession of Southern Union Pipeline by Southern Union as agent of Del Norte because of failure on the part of Del Norte to make payments of amounts becoming due Southern Union hereunder shall not relieve Del Norte of the continuing obligation to make payment of amounts becoming due to Southern Union under this agreement during the period when

224

Southern Union is operating the Southern Union Pipelines as the agent of Del Norte.

Southern Union shall have the right at all reasonable times to examine books, records and computations of Del Norte to the extent necessary to verify the accuracy of any statement of gas volumes delivered by Del Norte to Southern Union under or pursuant to any provisions of this agreement.

(224)

12. *Term.* This agreement and the terms and provisions hereof shall, unless sooner terminated as herein provided, be in full force and effect for a term of fifteen (15) years from and after the date hereof and thereafter from month to month until terminated, effective as of the end of such fifteen-year period or subsequent monthly anniversary thereof by written notice given to the other at least six (6) months prior to the effective date.

Either party may give written notice of any violation or default in the performance of any of the terms or conditions hereof by the other, and if the defaulting party within thirty (30) days after its receipt of any such notice fails to correct the default, the nondefaulting party shall have the right, cumulative of and in addition to all other rights and remedies, to terminate this agreement by written notice to the other party.

13. *Force Majeure.* Either party shall be excused for delay or failure to perform its agreements and undertakings other than those for payment of money, in whole or in part, when and to the extent that such failure or delay is occasioned by fire, flood, wind, lightning or other acts of the elements, explosion, act of God, act of the public enemy, condemnation or appropriation of essential property, inability to obtain right of way upon reasonable terms, acts, orders, compulsion, or interference of civil and/or military authorities, mobs, labor difficulties, vandalism, sabotage, malicious mischief or usurpation of power, freezing or accidents to wells, pipelines or other necessary facilities or (without limitation to the types enumerated) any other casualty or cause beyond

225

the reasonable control of the parties, respectively, which delays or prevents such performance in whole or in part, as the case may be; provided, however, that the party

whose performance hereunder is so affected shall immediately notify the other party of all pertinent facts and take all reasonable steps promptly and diligently to prevent such causes if feasible to do so, or to minimize or eliminate the effect thereof without delay. It is understood and agreed that settlement of strikes or other labor disputes shall be at the sole discretion of the party encountering the strike or other dispute.

14. *Notices.* Except as herein otherwise provided, any notice, request, demand, statement or bill provided for or contemplated by this agreement, or any notice which either party may desire to give the other, shall be in writing and shall be addressed to the address of the parties hereto, as the case may be, as follows:

To Del Norte—Del Norte Natural Gas Company, El Paso National Bank Building, El Paso, Texas 7991

To Southern Union—Southern Union Gas Company, Fidelity Union Tower, Dallas, Texas 75201

or to such different address as either party shall hereafter designate to the other by formal written notice. Any such notice, request, demand, statement or bill shall be deemed received by the party to whom so addressed when delivered at such address, or if mailed postage prepaid in registered sealed cover, when deposited in the United States mail and so addressed. In the event of emergency, notice may be given by telephone or telegraph and confirmed in writing delivered as aforesaid.

15. *Assignment.* This contract shall not be assigned by Del Norte, in whole or in part, and no such assignment shall be effective unless and until—

(a) All contracts of Del Norte and its affiliates for exportation and sale of gas to Natural de Juarez, Juarez Gas

Company, S.A. and others for distribution and sale of gas to consumers in Juarez be assigned concurrently with the assignment of this Lease of Natural Gas Facilities to the assignee of this Lease of Natural Gas Facilities, and such assignee shall have, by express provision in the instrument of assignment, assumed and agreed to perform and discharge, as the same accrue, all obligations of Del Norte under this agreement; and

(b) The Federal Power Commission shall have granted the assignee all requisite authorizations under the Natural Gas Act for exportation of gas to Mexico for sale under the assigned contracts, and the assignee shall have received all requisite governmental consents and authorizations for operation of facilities for such export of gas; and

(c) Executed copies of such assignments and governmental approvals shall have been delivered to Southern Union.

Subject to the foregoing, this agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

16. *Miscellaneous.* As to all matters of construction and interpretation this agreement shall be construed, interpreted and governed by the laws of the State of Texas.

This contract is deemed to contain and set forth the entire agreement between the parties.

No modification of the terms and provisions hereof shall be or become effective except pursuant to and upon the due and mutual execution of an appropriate supplemental written agreement by the parties.

(227)

No waiver by either party of any one or more defaults by the other party in the performance of any provisions of this agreement shall operate

227

or be construed as a waiver of any future default or defaults whether of a like or of a different character.

In witness whereof, this agreement is executed in several counterparts, each of which shall be deemed an original, all as of the day and year first above written.

DEL NORTE NATURAL GAS COMPANY

By JOHN L. HARLAN
President

Attest:

HENRY W. SIMON
Secretary

SOUTHERN UNION GAS COMPANY

By W. P. CHESNUTT
Vice President

Attest:

JOANNA NEAL
Assistant Secretary

* * * * *

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket G-513

RE: APPLICATION OF SOUTHERN UNION GAS COMPANY FOR
ORDER VACATING PRESIDENTIAL PERMIT AND AUTHORIZA-
TION FOR EXPORTATION OF NATURAL GAS

Southern Union Gas Company, a Delaware corporation (hereinafter referred to as "Applicant"), hereby requests vacation of a Presidential Permit and Authorization for exportation of gas into Mexico, and in support of such application respectfully states:

1.

Communications to Applicant regarding this application should be addressed to:

A. S. Grenier
General Attorney
Southern Union Gas Company
Fidelity Union Tower
Dallas, Texas 75201

2.

The Federal Power Commission in Docket No. G-513 by order dated January 2, 1945, authorized Applicant to export natural gas from the City of El Paso, State of Texas, to the Republic of Mexico, through delivery of gas to Juarez Gas Company, S.A., a corporation under the laws of the Republic of Mexico (herein called "Juarez Gas") for distribution in the City of Juarez, Mexico, and environs. On August 23, 1944, Applicant was issued a Presidential Permit authorizing

231

operation and maintenance of facilities to points of connection with lines of Juarez Gas at the international border between the United States and Mexico for exportation of gas to Mexico under authorization of the Commission's January 2, 1945 order. Exportation of gas to Mexico under such Order and Presidential Permit has been continued by Applicant to this time.

3.

Applicant has made an agreement with Del Norte Natural Gas Company (hereinafter called "Del Norte"), providing that upon issuance of requisite Presidential Permits and Federal Power Commission authorizations and approvals, Applicant will transfer and assign to Del Norte the gas sales contract of Applicant for sale and delivery of natural gas to Juarez Gas for distribution in the City of Juarez, Mexico. Upon execution and delivery of that assignment, Del Norte will assume all obligations of Applicant for exportation, sale and delivery of gas to Juarez Gas for distribution in Juarez, Mexico, and environs.

Applicant has been informed that Del Norte is making application to the Commission for authorization under Section 3 of the Natural Gas Act to export natural gas to Mexico through sales to Juarez Gas for distribution and sale in Juarez, Mexico, and environs and for a Presidential Permit authorizing operation and maintenance by Del Norte of facilities for that exportation of natural gas.

232**4.**

Gas required by Del Norte for export to Mexico will be purchased in El Paso, Texas, from El Paso Natural Gas Company (herein called "El Paso"). Applicant has been

(232)

advised that El Paso is making application to the Commission for requisite authorization and authority to make those sales of gas to Del Norte.

5.

The Export Authorization and Presidential Permit of Applicant, by their respective terms and provisions, are nonassignable. Consequently, assumption by Del Norte of Applicant's obligations for exportation and sale of gas to Juarez Gas will require issuance to Del Norte of an Export Authorization and a Presidential Permit and the vacation of Applicant's Export Authorization and Presidential Permit effective as of commencement of export service by Del Norte. In the opinion of Applicant, such action by the Commission will not be inconsistent with the public interest.

Wherefore, Applicant respectfully requests:

1. That this Application be considered and disposed of concurrently with the application of El Paso Natural Gas Company for authorization to make sales of gas to Del Norte Natural Gas Company for exportation and distribution in Juarez, Mexico, and the application of Del Norte Natural Gas Company for authorization to export natural gas and for Presidential Permit authorizing

233

operation and maintenance of facilities for exportation of natural gas.

2. That the intermediate decision procedure be omitted, Applicant hereby waiving oral argument and opportunity for filing exceptions, and that this Application be disposed of pursuant to the provisions of Section 1.32(b) of the Commission's Rules and Regulations providing for shortened procedure.

(233)

3. That the Commission issue its order vacating and terminating the authorization heretofore granted Southern Union Gas Company in Docket No. G-513 for exportation of natural gas to Mexico and the Presidential Permit dated August 23, 1944 for operation and maintenance of facilities for export of natural gas, effective as of the date Del Norte Natural Gas Company shall commence the exportation and sales of natural gas to Juarez Gas Company, S. A. that have been heretofore made by Applicant.

Respectfully submitted this 12th day of October, 1965.

SOUTHERN UNION GAS COMPANY
By A. M. Wiederkehr
Vice President

Attest:

Joanna Neal
Assistant Secretary

A. S. Grenier
William S. Jameson
Fidelity Union Tower
Dallas, Texas 75201

WILLIAM S. JAMESON
William S. Jameson
Attorneys for Southern Union Gas Company

• • • • •

(236)

236

JUAREZ GAS Co., S. A.
GAS NATURAL ENTUBADO
Av. 16 de Septiembre 219 Pte.
CD. JUAREZ, CHIH., MEXICO

Octubre 22, 1965.

Secretary
Federal Power Commission.
Washington, D.C.

Dear Sir:

Southern Union Gas Co., of El Paso, Texas who supplies us with natural gas, for distribution in Juarez, Chihuahua, Mexico, has delivered a copy of requests it has made to you as of the 15th of this month; and informs us that it wants to transfer the contract for supplying natural gas to a company known as Del Norte Natural Gas Co., who in turn will buy the gas from El Paso Natural Gas Co., and finally Del Norte will be the one to sell gas to us.

Southern Union Gas Co., and Juarez Gas Co., S. A., have a permit from that Commission Docket #G-513 (G-107) and a Presidential permit signed in August 22, 1944, authorizing the export of Natural Gas that is sold by Southern Union and imported by the Juarez Gas Co., S. A. in Juarez, Chihuahua, Mexico.

The Presidential Permit and your authorization, clearly states—that Southern Union Gas Co., may export to Juarez Gas Co., but that these permits are not transferrable.

By our request, ten days after the application to you by Southern Union Gas Co., was made, we were sent a letter by them; photostatic copy of which we include; and you will notice that Southern Union Gas will continue to be a beneficiary in the export of gas which is delivered to

(237)

us; but on the surface, will relinquish our contract to Del Norte Gas Co., but in so doing, it also establishes and added burden to costs; as it will charge a rent or lease lines it will supposedly construct, and naturally this will mean an increase in costs.

As you know we have been receiving gas and distributing it in Juarez thru pipelines that are already there for 30 years; consequently no pipe line construction to us would have to be built.

You will also notice by this letter, that Southern Union Gas Co., states that prices or rates, of our contract will not change, without their permission. We understand that you are the only authority that regulates rates.

As we are not in agreement with the vacation of the permits as asked by Southern Union Gas Co., or the transferring of our contracts, and

237

less with procedures that will certainly be against public interests, we respectfully ask for your intervention in this problem.

Respectfully,

Juraez Gas Co., S. A.

J. Anatole Silva.

Manager-Director.

(238)

238

COPY OF TELEGRAM SENT ON OCTOBER 22nd, 1965.

SECRETARY.

Federal Power Commission

Washington, D.C.

SOUTHERN UNION GAS OF EL PASO, TEXAS (coma) EXPORTERS
WHO SUPPLY US WITH NATURAL GAS FOR DISTRIBUTION
IN JUAREZ, CHIHUAHUA, MEXICO (stop) PRETENDS TO
TRANSFER OUR IMPORT AUTHORIZATION (coma) YOUR
DOCKET NUMBER G FIVE ONE THREE (coma) TO A
COMPANY NAMED AS DEL NORTE NATURAL GAS CO. (stop)
WE ARE NOT AGREEABLE (coma) PRIMARILY PRESIDENTIAL
PERMIT AND YOUR AUTHORIZATION (coma) PROHIBITS
SUCH TRANSFERS (Stop)

JUAREZ GAS CO. S.A.
J. ANATOLE SILVA
DIRECTOR-MANAGER

239

SOUTHERN UNION GAS COMPANY
Suite 9-F, El Paso National Bank Bldg.
El Paso, Texas 79901

October 19, 1965

E. M. KELLY

VICE PRESIDENT

Mr. J. Anatole Silva
Juarez Gas Company, S. A.
Av. 16 de Sept. 115 Pte.
Cd. Juarez, Chih., Mexico

Dear Mr. Silva:

As per your request, this will confirm our conversations
in the meeting this date in my office, at which those present
were Mr. Jesus Silva, yourself, Mr. E. C. Reedy, District
Manager of Southern Union Gas Company, and myself.

At this meeting we advised that we had entered into an
agreement with Del Norte Natural Gas Company whereby

(240)

we would build and lease pipeline facilities to Del Norte for the transportation of gas which they would purchase from El Paso Natural Gas Company and resell to Gas Natural de Juarez, in Juarez, Mexico; also, the assignment of contract between Juarez Gas Company and Southern Union Gas Company, with all of the contractual provisions in such contract to be assumed by Del Norte Natural Gas Company, with no change in provisions or prices without the consent of Southern Union Gas Company.

As stated in our conversation of this date, this agreement between Southern Union Gas Company and Del Norte Natural Gas Company is contingent upon Del Norte obtaining prior approvals from the federal governments of the United States and Mexico.

Very truly yours,

E. M. KELLY

E. M. Kelly

EMK:ob

240

SOUTHERN UNION GAS COMPANY
Fidelity Union Tower
Dallas 1, Texas

October 15, 1965

Secretary
Federal Power Commission
Washington, D.C.

Dear Sir:

In re Docket No. G-513

Two original executed and nine conformed copies of the application of Southern Union Gas Company for Federal Power Commission order vacating the authorization for exportation of natural gas heretofore granted to it in

(240)

the above docket and for vacation of the Presidential Permit heretofore granted to it for operation and maintenance of facilities for such gas export are enclosed for filing.

The exportation of natural gas heretofore made by Southern Union Gas Company under these authorizations will, subject to Commission action, be assumed by Del Norte Natural Gas Company with gas volumes supplied to it by El Paso Natural Gas Company. The application of El Paso Natural Gas Company for authority to make those sales is now pending in Docket No. CP66-105 and the application of Del Norte Natural Gas Company for authority to make such export of natural gas is now pending in Docket No. CP66-104, while the application of Del Norte Natural Gas Company for Presidential Permit covering export facilities is pending before the Commission in Docket No. CP66-106.

Expeditious handling of the enclosed application could be achieved through a consolidated hearing of the enclosed application with the related applications pending in Dockets CP66-104, CP66-105 and CP66-106.

As reflected by the Certificate of Service attached to the enclosed application, copies thereof have been furnished to Del Norte Natural Gas Company, El Paso Natural Gas Company and Juarez Gas Company, S. A.

Very truly yours,

William S. Jameson, Attorney
WILLIAM S. JAMESON

WSJ:feh

Enclosures—11

cc Del Norte Natural Gas Company
El Paso Natural Gas Company
Juarez Gas Company, S. A.

241

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. CP66-104
CP66-106

DEL NORTE NATURAL GAS COMPANY

Docket No. CP66-105

EL PASO NATURAL GAS COMPANY

AND

EL PASO GAS TRANSPORTATION CORPORATION

Docket No. G-513

SOUTHERN UNION GAS COMPANY

Notice of Applications

(October 28, 1965)

Take notice that on October 12, 1965, Del Norte Natural Gas Company (Applicant), 1026 Southwest National Bank Building, El Paso, Texas, filed in Docket No. CP66-104 an application pursuant to Section 3 of the Natural Gas Act requesting an order of the Commission authorizing Applicant to export natural gas from the United States to the Republic of Mexico (Mexico). On the same date Applicant filed in Docket No. CP66-106 an application for a permit pursuant to Executive Order No. 10845, dated September 3, 1953, authorizing the operation, maintenance and connection of facilities at the International Boundary between the United States and Mexico for the exportation of natural gas to Mexico. By these applications, Applicant proposes to succeed to Southern Union Gas Company (Southern Union) in the exportation and sale of natural gas which

(241)

was authorized by the Commission on January 2, 1945, in Docket No. G-513 (4 FPC 826). On October 18, 1965, pursuant to an agreement between Applicant and Southern Union, Southern Union filed in the aforementioned Docket No. G-513 an application for an order of the Commission vacating its Presidential Permit and authorization for exportation of natural gas.

Also filed on October 12, 1965, was a joint application by El Paso Natural Gas Company (Gas Company) and El Paso Gas Transportation Corporation (Transportation Corporation), Post Office Box 1492, El Paso, Texas 79999, in Docket No. CP66-105 for permission and approval under Section 7(b) of the Natural Gas Act, and for certificates of public convenience and necessity under Section 7(c) of the Natural Gas Act, for, on the part of the Gas Company, the abandonment of the sale of natural gas made by Gas Company to Southern Union and for authorization for the sale and delivery of natural gas by

242

Gas Company to Applicant and for, on the part of Transportation Corporation, the abandonment of the transportation of natural gas by Transportation Corporation for Southern Union and for authorization for the construction and operation of certain facilities and the transportation of natural gas for the account of Applicant.

The proposal involved is more fully set forth in the applications submitted in the above docket numbers. These applications are on file with the Commission and open to public inspection.

The applications incorporate a proposal by Applicant to provide natural gas to Ciudad Juarez, Chihuahua, Mexico, a community situated adjacent to the City of El Paso, Texas. Applicant proposes to succeed to Southern Union

in the sale and delivery of natural gas to Juarez Gas Company, S. A. (Juarez Gas), the sole distributor presently serving the community of Juarez, and to initiate the sale and delivery of natural gas to Gas Natural de Juarez, S. A. (Juarez Natural), a new distributor proposing to render natural gas service in areas of Juarez not now served by Juarez Gas. Such export and sale would be made at four points situated on the International Boundary between the said communities of Juarez and El Paso.

The exportation and sale of gas to Juarez Gas is presently made by Southern Union by means of gas sold to it by Gas Company and transported for it by Transportation Corporation. It is this sale and this transportation for which Gas Company and Transportation Corporation seek, respectively, permission and approval to abandon. The exportation and sale to Juarez Natural at the remaining two export points would be initiated by Applicant.

Natural gas available to Applicant from Gas Company is deliverable at a point situated within El Paso. Transportation Corporation proposes and seeks authorization to transport such gas for the account of Applicant from the point at which it is deliverable by Gas Company to Applicant, to three points of delivery to Applicant on Transportation Corporation's existing system within El Paso. At each of such points of delivery to Applicant, Transportation Corporation proposes and seeks authorization to construct and operate a standard orifice-type measuring and regulating station at an aggregate cost of \$32,100 to be financed from working funds.

Applicant proposes to lease from Southern Union and operate certain existing facilities and certain other facilities to be constructed by Southern Union, such facilities connecting the three delivery points from Transportation Corporation to Applicant with the four export points. The

(242)

estimated cost of the facilities to be constructed by Southern Union is \$71,990. Distribution facilities are proposed in Juarez by Juarez Natural at an estimated cost of \$2,570,500. The other Mexican distributor, Juarez Gas, proposes no substantial construction at this time.

243

Specifically, the facilities to be constructed by Southern Union and leased to Applicant would consist of the following:

(a) 5,210 feet of 12-inch transmission line and a measuring and regulating station at a cost of \$34,050;

(b) 7,000 feet of 6-inch transmission line and a measuring and regulating station at a cost of \$30,915;

(c) An addition to existing facilities consisting of 500 feet of 6-inch and 1800 feet of 4-inch transmission line at a cost of \$7,025.

The estimated peak day and annual natural gas requirements of Juarez Natural and Juarez Gas for the first three full years of operation of the proposed facilities are stated to be:

<i>Juarez Natural</i>	<i>First year</i>	<i>Second year</i>	<i>Third year</i>
Annual (Mcf)	2,543,153	2,765,028	3,036,138
Peak day (Mcf)	15,230	18,037	21,084
<i>Juarez Gas</i>	<i>First year</i>	<i>Second year</i>	<i>Third year</i>
Annual (Mcf)	367,500	378,000	388,500
Peak day (Mcf)	4,684	4,819	4,935

Sales and deliveries to be made by Gas Company to Applicant would be in accordance with Gas Company's Rate Schedule A-3 and B-2, FPC Gas Tariff, Original Volume

(244)

No. 1, on file with the Commission. Transportation service to be performed by Transportation Corporation for Applicant would be in accordance with and at rates contained in Transportation Corporation's Rate Schedule T-1, FPC Gas Tariff, First Revised Volume No. 1, on file with the Commission.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D. C. 20426, in accordance with the Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (157.10) on or before November 19, 1965.

244

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the permit, certificates and permission and approval for the proposed abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Joseph H. Gutride
Secretary

(245)

245

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

In the matters of

Docket No. G-513

SOUTHERN UNION GAS COMPANY

Docket No. CP66-104

DEL NORTE NATURAL GAS COMPANY

Docket No. CP66-105

EL PASO NATURAL GAS COMPANY
EL PASO GAS TRANSPORTATION COMPANY

Docket No. CP66-106

DEL NORTE NATURAL GAS COMPANY

**Petition of Juarez Gas
Company, S. A. to Intervene**

Juarez Gas Company, S. A., having an interest in the above-captioned matters which may be adversely affected by an order or orders of the Federal Power Commission issued in the above-captioned dockets hereby petitions to intervene in each of the said docketed proceedings in opposition to the granting of the respective Applications and issuance of the Presidential Permit proposed. In support hereof, Juarez respectfully represents:

1. Juarez Gas Company, S. A. is the sole distribution company in the City of Juarez and has been distributing,

(246)

under present management, natural gas in the City of Juarez since 1935.

2. The correct name and address of Petitioner is:

Juarez Gas Company, S. A.
Av. 16 de Septiembre 219 Pte.
Cd. Juarez, Chih., Mexico

246

3. The name, title and mailing address of persons upon whom all correspondence, communications, and other matters concerning this Petition to Intervene shall be served are:

William J. Grove, Attorney
600 Madison Building
1155 Fifteenth Street, N.W.
Washington, D.C. 20005

and

Jesus Anatole Silva
Gerente General
Av. 16 de Septiembre 219 Pte.
Cd. Juarez, Chih., Mexico

4. The sole source of the natural gas supply to Juarez Gas is and has been those volumes imported from the United States, exportation of which from the United States was authorized by the Federal Power Commission in Docket Nos. G-107 and G-513 issued April 25, 1941 and January 2, 1945, in accord with and pursuant to a contract dated May 7, 1935 between Texas Cities Gas Company and Juarez Gas Company, S. A. The orders and terms and conditions of exportation are more fully set forth and described in the matter of *Southern Union Gas Company*, Docket No. G-513, 4 FPC 826-8.

5. Juarez Gas has continuously expanded and extended distribution facilities and service within the City of Juarez

(246)

and has proposed further expansion of facilities and service so as to render service to substantially all of the City of Juarez and environs. In furtherance of and to implement such expansion, Juarez has, as early as March, 1964 and subsequent thereto, filed appropriate plans as required by law with the Secretary of Industry

247

and Commerce. It is reasonably to be expected that approval of the entirety of such plans will be secured. Juarez will continue to construct and operate facilities and inaugurate new and increased service in accordance with such plans.

6. Granting of the several Applications in the within dockets would adversely affect Juarez and the ultimate consumers presently receiving and to receive natural gas service from Juarez Gas in the City of Juarez and its environs.

7. No good reason or purpose consistent with the public interest has been shown or averred warranting, or in any manner justifying, assignment of the contract between Southern Union and Juarez Gas to Del Norte; nor has there been demonstrated any justification or warrant consistent with the public interest for the proposed construction of increased facilities by Southern Union and subsequent lease thereof and of existing authorized facilities by which Southern Union effects exportation of natural gas to Juarez Gas; nor has there been shown reason or justification consistent with the public interest for approval of a contract requiring payment of a minimum annual \$84,000 lease charge in connection with the foregoing construction and lease arrangement.

8. It is not consistent with the public interest to authorize vacation of outstanding export authorization and

Presidential Permit to Southern Union and assumption of those identical rights and obligations by another, when to do so will require the

248

other person, in addition to the assumption of such obligation, to pay a guaranteed minimum annual rental of property continued to be owned by Southern Union.

9. Juarez Gas opposes granting of the several Applications for it is not only not consistent with the public interest, but also contrary to the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier with the inevitable ruinous competition, duplication of facilities and concomitant adverse effects, all of which it is the purpose of regulation to prevent.

10. Gas Natural de Juarez, S. A., the proposed new distribution company and proposed recipient of a substantial portion of the natural gas proposed to be exported in Docket Nos. CP66-104 and CP66-106, is a purely paper company, newly created, with no experience whatsoever in the management and operation of a company engaged in the distribution of natural gas; instead the past experience of the management of such company has been in a field or fields wholly unassociated in any way with the natural gas business and, in particular, the distribution of natural gas.

11. The several Applications are deficient as a matter of fact and law in that (a) no showing has been made or attempted to be made of the ability of Gas Natural to receive and dispose of,

249

through sale or use, the 15,000 Mcf per day proposed by Del Norte to be exported nor, as the necessary consequence

(249)

of such deficiency, the necessity for construction and operation of facilities to enable the exportation of such volumes of natural gas from the United States; (b) no showing has been made that granting of the Application will not result in economic ruin to Gas Natural, nor that serious adverse economic consequences will result to Juarez Gas Company, S. A. the present distributor in Juarez and its environs; (c) Juarez Gas avers on information and belief, notwithstanding the assertion of Del Norte to the contrary (page 6—Application, Docket No. CP66-104), that Gas Natural de Juarez, S. A. has not procured all the consents and authority from the Republic of Mexico, State of Chihuahua, and the City of Juarez, necessary to permit it to serve natural gas in the City of Juarez; to the contrary, Juarez believes that it is highly improbable that all consents and authority necessary and prerequisite from the Republic of Mexico, State of Chihuahua and the City of Juarez and others, necessary to permit Gas Natural to receive the natural gas proposed to be imported into Mexico, and to operate a distribution system within the City of Juarez and its environs will, in fact, ever be secured; and (d) no showing has been made of the capability, much less the probability, of economic and financial ability of Gas Natural to qualify as a Mexican corporation eligible to secure import authorization; this deficiency is particularly controlling inasmuch as import authorization will be denied by the Mexican

250

Government to any corporation whose source of capital is in any way dependent upon contribution or guarantee by any person other than a Mexican corporation or Mexican citizen.

12. Recognition that the interest of Juarez in the instant proceedings will be adversely affected is found in the Ap-

plication of Del Norte itself. The "Lease of Natural Gas Facilities" between Del Norte and Southern Union (page 9) anticipates Juarez Gas Company, S. A., going out of business and provides that, in such event, the gas purchase contract of June 17, 1952 between Southern Union and Juarez may be reassigned to Southern Union insofar as the same covers sales of natural gas to meet the requirements of "the present Juarez Gas Company S. A. distribution system."

13. The position that Juarez Gas Company, S. A. would take in the instant proceedings is in opposition to the granting of the Application in each of the dockets.

14. Juarez will participate actively in the proceeding to the end that the record be developed appropriately and fully and that there be presented to the Commission all facts relevant and material to enable the Commission thereon to conclude on the facts and law that granting of the Applications herein will not be consistent with the public interest; it will be contrary to the public interest.

Wherefore, Juarez Gas Company, S. A., by reason of the foregoing, and being a person whose rights will be adversely affected

251

by granting of the within Applications, respectfully petitions this Commission to permit Juarez Gas Company, S. A. to intervene as a party in the above-entitled proceedings in opposition to the granting of the Applications and Presidential Permit, and to have the right to appear and be

(251)

represented by counsel, cross-examine witnesses, introduce evidence, and to be heard in brief and oral argument, if any.

Respectfully submitted,

JUAREZ GAS COMPANY, S. A.
WILLIAM J. GROVE
600 Madison Building
1155 Fifteenth Street, N.W.
Washington, D. C. 20005

JESUS ANATOLE SILVA
Gerente General
Av. 16 de Septiembre 219 Pte.
Cd. Juarez, Chih., Mexico

(Signed) William J. Grove

By

WILLIAM J. GROVE

(Signed) Jesus Anatole Silva

.....

JESUS ANATOLE SILVA

Of Counsel:

GROVE, PAGLIN, JASKIEWICZ,
GILLIAM AND PUTBRESE
600 Madison Building
1155 Fifteenth Street, N.W.
Washington, D. C. 20005

Dated: November 5, 1965

• • • • •

254

Docket No. CP66-106
DEL NORTE NATURAL GAS COMPANY

November 12, 1965

Honorable Dean Rusk
The Secretary of State
Washington, D. C. 20520

Dear Mr. Secretary:

Pursuant to the provisions of Executive Order No. 10485 of September 3, 1953, there is enclosed herewith for your information and consideration a copy of the application of Del Norte Natural Gas Company (Del Norte) filed with the Federal Power Commission in Docket No. CP66-106 on October 12, 1965, wherein said company seeks the issuance of a permit pursuant to the provisions of said Executive Order, authorizing the operation, maintenance and connection of natural gas facilities on the International Boundary between the United States and Mexico near El Paso, Texas, for the exportation of natural gas from the United States into Mexico.

There is also enclosed for your consideration a draft of the permit to be issued to Del Norte, incorporating terms and conditions which you and the Secretary of Defense have heretofore required in other similar cases. This is the form of permit which would issue in the event the Commission finds that the exportation of gas to Mexico as proposed by Del Norte is consistent with the public interest, a determination which has not yet been made.

The Commission would appreciate receiving your views with respect to the issuance of the permit or the language contained therein at an early date in order that it may

(254)

take such action as is contemplated by the aforementioned Executive Order and as is appropriate in light of your response together with that of the Secretary of Defense.

A similar letter, together with a draft of the proposed permit and a copy of the aforesaid application is being simultaneously transmitted to the Secretary of Defense. If the Secretary of Defense should make an unfavorable recommendation or propose any material change in the draft of the permit, as here enclosed, the Commission will immediately so advise you.

255

Honorable Dean Rusk

Please do not hesitate to call upon me for any further information you may desire in this matter.

Sincerely,

(signed) DAVID S. BLACK
David S. Black
Acting Chairman

2 Enclosures

No. 5564 Copy of application

No. 5565 Draft of proposed permit

OGC

Uthus, D.C.:mv

10/28/65

cc: Files

Chairman (2)

Each Commissioner

Executive Director

Mr. Solomon

Mr. Russell

Mr. Uthus

BNG

OGC

256

Docket No. CP66-106
DEL NORTE NATURAL GAS COMPANY

November 12, 1965

Honorable Robert S. McNamara
The Secretary of Defense
Washington, D. C. 20301

Dear Mr. Secretary:

Pursuant to the provisions of Executive Order No. 10485 of September 3, 1953, there is enclosed herewith for your information and consideration a copy of the application of Del Norte Natural Gas Company (Del Norte) filed with the Federal Power Commission in Docket No. CP66-106 on October 12, 1965, wherein said company seeks the issuance of a permit pursuant to the provisions of said Executive Order, authorizing the operation, maintenance and connection of natural gas facilities on the International Boundary between the United States and Mexico near El Paso, Texas, for the exportation of natural gas from the United States into Mexico.

There is also enclosed for your consideration a draft of the permit to be issued to Del Norte, incorporating terms and conditions which you and the Secretary of State have heretofore required in other similar cases. This is the form of permit which would issue in the event the Commission finds that the exportation of gas to Mexico as proposed by Del Norte is consistent with the public interest, a determination which has not yet been made.

The Commission would appreciate receiving your views with respect to the issuance of the permit or the language contained therein at an early date in order that it may

(256)

take such action as is contemplated by the aforementioned Executive Order and as is appropriate in light of your response together with that of the Secretary of State.

A similar letter, together with a draft of the proposed permit and a copy of the aforesaid application is being simultaneously transmitted to the Secretary of State. If the Secretary of State should make an unfavorable recommendation or propose any material change in the draft of the permit, as here enclosed, the Commission will immediately so advise you.

257

Honorable Robert S. McNamara

Please do not hesitate to call upon us for any further information you may desire in this matter.

Sincerely,

(signed) DAVID S. BLACK
David S. Black
David S. Black
Acting Chairman

2 Enclosures

No. 5562 Copy of application
No. 5563 Draft of proposed permit

cc: Files

Chairman (2)	Mr. Russell
Each Commissioner	Mr. Uthus
Executive Director	BNG
Mr. Solomon	OGC

Approved by the Commission

OGC

Uthus, D.C.:mv

10/27/65

Secretary's Office

• • • • • • • • •

259

UNITED STATES OF AMERICA
BEFORE THE FEDERAL POWER COMMISSION

In the Matter of
DEL NORTE NATURAL GAS COMPANY

Docket Nos. CP66-104
CP66-106

**Supplement to the Application for Authorization to Export Natural
Gas and to the Application for Presidential Permit**

TO THE FEDERAL POWER COMMISSION: Comes now Del Norte Natural Gas Company, Applicant, and submits this its Supplement to the Application for Authorization to Export Natural Gas and its Application for Presidential Permit heretofore filed under the above-styled docket numbers and in connection therewith and in further support of such applications would respectfully say and show to the Commission as follows:

I.

Gas Natural de Juarez is *not* a paper company and said company has procured all of the consents and authority from the Republic of Mexico, State of Chihuahua and City of Juarez necessary to permit it to serve natural gas in said City and in this connection Applicant submits the following documents:

260

(a) A copy of the original letter of authorization from the City of Juarez, Chih., and an English translation thereof, is filed with the Commission as an exhibit labeled Tab A to the Original Application of El Paso Natural Gas Company and El Paso Gas Transportation Corporation at Docket No. CP 66-105 for Permission and

(260)

Approval and a Certificate of Public Convenience and Necessity and said letter (exhibit labeled Tab A) is incorporated herein by reference.

(b) A copy of the original letter of authorization from the State of Chihuahua and an English translation thereof is filed with the Commission as an exhibit labeled Tab C to the original application of El Paso Natural Gas Company and El Paso Gas Transportation Corporation at Docket No. CP66-105, identified in (a) above, and said letter (exhibit labeled Tab C) is incorporated herein by reference.

(c) A copy of the original letter of April 10, 1965 from the Secretary of Industry and Commerce of the Republic of Mexico and an English translation thereof, which letter authorizes the construction by Gas Natural de Juarez of a natural gas distribution system in Zones 1, 2 and 3 of the City of Juarez, Chih., is filed with the Commission as an exhibit labeled Tab D to the original application of El Paso Natural Gas Company, et al., Docket No. CP66-105 as referred to in (a) above, and said letter (exhibit labeled Tab D) is incorporated herein by reference.

261

(d) There is submitted with this Supplement as an exhibit, a copy of the original letter from the Secretary of Industry and Commerce of the Republic of Mexico, and an English translation thereof, which letter authorizes the construction by Gas Natural de Juarez of a natural gas distribution system in Zones No. 6, 7, 9, 10, 11, 12, 13 and 19 of the City of Juarez, which letter is attached hereto and labeled as Tab 1.

(e) There is submitted with this Supplement as an exhibit a copy of the original letter from the Secretary

(262)

of Industry and Commerce of the Republic of Mexico, dated November 16, 1965, and an English translation thereof, advising that the gas distribution system in Zone 1 is completed and that all necessary tests have been approved and that it can receive gas immediately, which letter is attached hereto and labeled as Tab 2.

(f) There is submitted with this Supplement as an exhibit a copy of the original letter from the Secretary of National Patrimony of the Republic of Mexico, and an English translation thereof, dated August 17, 1964, addressed to Engineer Alfonso Caravero advising that said Secretary will help to make effective a license to import and distribute natural gas from the United States into the City of Juarez when the administrative authorities approve the feasibility of the application, which letter is attached hereto and labeled as Tab 3.

262

(g) There is submitted with this Supplement as an exhibit, a copy of the original letter from Petroleos Mexicanos to Gas Natural de Juarez, and an English translation thereof, advising that Petroleos Mexicanos does not disapprove of said corporation importing and distributing natural gas in Juarez as long as Petroleos Mexicanos does not have a gas line that would permit it to serve the city, which letter is attached hereto and labeled as Tab 4.

(h) There is submitted with this Supplement as an exhibit, a copy of the original Certificate of Francisco Rodriguez Gomez, Official Mayor of the Secretary of Industry and Commerce, dated November 17, 1965, and an English translation thereof, certifying as to documents and also certifying to the verification of the completion and installation of the distribution system of Gas Natural de Juarez in Zone 1, in accordance with previous authori-

(262)

zations and advising that the corresponding authorization for use and operation of the system in that Zone will be immediately furnished and that additional authorizations will be extended to other zones that are being completed and satisfactorily tested, which certificate is attached hereto and labeled Tab 5.

(i) A copy of the original letter to Gas Natural de Juarez from the Secretary of Health and Assistance of the Republic of Mexico, and an English translation thereof, is filed with the Commission as an exhibit labeled Tab B to the Original Application of El Paso Natural Gas

263

Company and El Paso Gas Transportation Corporation as Docket No. CP66-105, identified in (a) above, and said letter (exhibit labeled Tab B), which grants authority to Gas Natural de Juarez to install a gas distribution system in the City of Juarez is incorporated herein by reference.

(j) There is submitted with this Supplement as an exhibit a copy of the original letter of November 10, 1965 from the National Chamber of Industry of the City of Juarez, Chihuahua, and an English translation thereof, advising that Gas Natural de Juarez is actually installing a pipeline system to serve consumers with natural gas pursuant to authorization from the Secretary of Industry and Commerce, which letter is attached hereto and labeled as Tab 6.

(k) There is submitted with this Supplement as an exhibit a copy of the original letter from the National Chamber of the Construction Industry of Juarez, Chihuahua addressed to the Federal Power Commission, and an English translation thereof, certifying that Gas Natural de Juarez has been making installations for a gas distribution system in that city using the methods and

(264)

materials according to the direction of the Secretary of Industry and Commerce, which letter is attached and labeled as Tab 7.

(1) There is submitted with this Supplement as an exhibit a copy of an original letter from the National Chamber of Commerce

264

of Juarez, Chih., dated November 10, 1965, and an English translation thereof, advising that Gas Natural de Juarez is actually building a pipeline system for the distribution of gas in said City, and that during the past six months has actually installed 3200 taps for domestic and commercial service, which letter is attached and labeled as Tab 8.

II.

WHEREFORE, Applicant prays the issuance of the Order and Authorization authorizing Applicant to export natural gas from the United States to the Republic of Mexico and the issuance of a Presidential Permit allowing Applicant to operate and maintain border facilities at the border of the United States and Mexico for the exportation of such gas from the State of Texas to the Republic of Mexico as requested in the Original Applications abovementioned, and for such other and further relief as the Commission may find proper.

Respectfully submitted,

DEL NORTE NATURAL GAS COMPANY
By: JOHN L. HARLAN
President

Attest:
(Seal) Henry M. Simon
Secretary

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA

JOHN L. HARLAN, being first duly sworn on oath states that he is President of Del Norte Natural Gas Company, that as such officer he has executed the within and foregoing Supplement to the Application for Authorization to Export Natural Gas and to the Application for Presidential Permit and that the matters and facts set forth therein are true to the best of his information, knowledge and belief.

JOHN L. HARLAN
President

Subscribed and sworn to before me, the undersigned authority, on this 18th Day of November, 1965:

MARIE MEADOWS
Notary Public
My Commission Expires Sept. 30, 1968.

UNITED STATES OF AMERICA
DISTRICT OF COLUMBIA

I, RAMON RAMOS, Spanish interpreter and translator of Washington, D. C., do hereby state that the Mexican documents designated as Tab 1, Tab 2, Tab 3, Tab 4, Tab 5, Tab 6, Tab 7 and Tab 8, attached hereto, have been translated into English by me and that the translations thereof also attached hereto are, to my knowledge and ability, correct translations into the English language of the Spanish language of the Mexican documents referred to.

RAMON RAMOS

(270)

Subscribed to before me this 18th day of November, 1965.
To certify it witness my name and seal

MAURICE LOVE

Notary Public

My Commission Expires August 1, 1966

• • • • •

270

Tab 1

SECRETARY OF
INDUSTRY AND COMMERCE

DEPARTMENT: General Director of Gas

SECTION: Technical

OFFICE NO.: 10920

FILE: 22/325.1/9

SUBJECT:

The Approval of the Construction of Installations for the
Distribution of Natural Gas, in the Zones indicated.

MEXICO, D. F.

October 11, 1965

GAS NATURAL DE JUAREZ, S. A.

16 of September No. 249 East

City of Juarez, Chih.

Attention: Engineer Alfonso Caraveo, General Manager

In relation to various applications and requests, in which there has been solicited authorization to continue the construction of the installations to distribute natural gas in the City of Juarez, Chih., this Secretary states to you: that after having made a study of all of the documents which have been delivered to us up to this date and in attention to the urgency to continue the

(270)

paving program in that city, there is no objection in beginning the work to which we hereinafter make reference by the authorization for the use and functioning of the equipment and system referred to in Article 27 of the Regulations in force will be granted at the time the installations are completed in accordance with the prior report that will be rendered on this matter by the technicians of the Secretary.

With the purpose of assuring that the above mentioned installations fulfill the technical conditions that will guarantee the efficiency of the domestic services and the security of the people and their welfare, the works will be supervised from the beginning until their conclusion and the corresponding tests including those for leaks have been made. For this reason you will proceed to deposit in the first days of the month of January in the National Bank of Mexico, S.A., at the disposal of this Secretary the amount of \$100,000 pesos which will be used to pay the salaries and expenses of the technician or technicians that this Department considers convenient to designate during the progress of the work. The remaining part of the deposit, if there is any remainder, will be returned to that company at the time the authorization for use and operation is assured.

In accordance with the technical-descriptive studies and the maps presented the immediate realization in Zones 6, 7, 9, 10, 11, 12, 13 and 19 is considered possible within the limits described as follows:

271

a). ZONE NUMBER 6.—To the North: Patzcuaro Street and a line 100 meters north of the extension to the east of the Avenue Hermanos Escobar. To the East: extension to the north of Lopez Mateos Avenue (Emisario Street). To the South: to the North to the national

border program (Pro Na F) and Coyoacan Street. To the West: Los Americas Avenue.

b). ZONE NUMBER 7.—To the North: Southern Bank of the Rio Bravo. To the East: eastern side of the Cardova Americas extension. To the South: southern site of the Cardova Americas extension. To the West: Lincoln Avenue.

c). ZONE NUMBER 9.—To the North: March 18th Street from Porfirio Diaz Street to Escobedo Street. To the East: an irregular line as follows: Escobedo Street, Independence Street, extension to the north of Fourth Street, the extension to the east of Ninos Heroes Street, "V" Street, Benito Juarez Street, and Lopez Mateos Avenue. To the South: 29th Street; to the West: Cervecería Ave. and Porfirio Diaz Street.

d). ZONE NUMBER 10.—To the North: Heroe de Nacozari Street and Otermin Street. To the East: National Railroad. To the South: an irregular line as follows: 24th Street, Globo Street, 103d Street, extension to the south of Garcia Street and 17th Street. To the East (sic) West Belisario Dominguez Street.

e). ZONE NUMBER 11.—To the North: Heroe de Nacozari Street. To the East: Belisario Dominguez Street. To the South: 17th Street. To the West: Ignacio Mariscal Street.

f). ZONE NUMBER 12.—To the North: Ramon Aranda Street. To the East: Iganacio Mariscal Street. To the South: an irregular line as follows: 14th Street, Arteaga Street and Gomez Farias. To the West: Colorado Street.

g). ZONE NUMBER 13.—To the North: September 16th Avenue. To the East: Colorado Creek. To the South: 57th Street. To the West: an irregular line as

(271)

follows: Laton Street, Ramon Aranda Street, "J" Street, Joaquin Terrazas Street and "L" Street.

g). ZONE NUMBER 19.—To the North: south and east sides of Los Nogales extension, Southern side of Villa Del Norte extension. To the East: parallel line to Lopez Mateos Ave. at 900 meters to the East. To the South: Del Pueblo irrigation ditch. To the West: parallel line to Lopez Matos Avenue, 100 meters east.

272

Based on articles 55, 58 and related articles in the Gas Distribution Regulations, the equipment for the handling and use of gas will have to be approved and authorized by this Secretary. It is considered included in the same regulations, the machinery used for handling pipe, the instruments to regulate and measure the volume and pressure, control and safety accessories for handling of the appliances for use of gas as a fuel. In consequence, the plans, specifications of construction and use of such equipment will have to comply with the particular conditions approved by this Secretary. The equipment of foreign origin can be used only when such specifications and construction characteristics have been previously accepted by this Department.

The Company Gas Natural de Juarez, S. A., shall begin the immediate construction of the above-mentioned distribution installations and finish them within a period not to exceed 270 working days from the beginning date.

Sincerely,

By the Secretary The Official Mayor
ATTORNEY FRANCISCO RODRIGUEZ GOMEZ

* * * * *

274

Tab 2

SECRETARY OF
INDUSTRY AND COMMERCE

SUBJECT: Inspection has been made of the construction
system of the company.

Cd. Juarez, Chih., Nov. 16, 1965.

GAS NATURAL DE JUAREZ, S. A.
Ciudad

I have inspected your construction system and have
approved all of the necessary tests.

The construction of zones 1 and 6 comply with the
specifications of the Mexican Code of Gas and the North
American Code of Distribution of Gas B-31, Soc. 8.

The pressure tests were in the secondary lines 100
Lbs./pg² and the main Lines 150 Lbs./pg².

The pipes are covered with the proper materials for
corrosion protection.

Zone #1 is completed and can receive gas immediately.

The quality of the construction is very good and has
been very well done.

Truly yours,

SUFRAGIO EFECTIVO. NO REELECCION.
EL TECNICO DE GAS Y
NORMAS

(Sgd) H. ESPINOSA

ING. HELIODORO ESPINOZA GUERRERO

HEG/jgev.

• • • • •

(277)

277

Tab 3

SECRETARY OF
NATIONAL PATRIMONY

Sub-Secretary of Land and Urban Development
General Direction of Federal Board of
Material Developments

80/5801

Mexico, D. F. August 17, 1964

C. ING.—ALFONSO CARAVEO O.

Present

In connection with the verbal consultation with this Subsecretary in relation and in connection with the dateless letter addressed to Attorney Raul Salinas Lozano, Secretary of Industry and Commerce in which you ask for the permission to import and distribute natural gas from the United States into the City of Juarez for industrial purposes, we advise you that once the administrative authorities approve the feasibility of your application, this Secretary of National Patrimony, pursuant to its jurisdiction will be in a position to render all the help that will make effective the license that will be issued in such event.

Sincerely,

The Subsecretary
Architect—Guillermo Rossell.

* * * * *

279

PETROLEOS MEXICANOS

Production, Refining and Distribution of Oil and
Its Derivatives

AV. JUAREZ 94
MEXICO 1, D. F.

APDOS. 34 BIS - 36 BIS
CABLE "PEMEX"

MEXICO, D. F.

May 10, 1965

Mr. Alfonso Caraveo Orozco
General Manager of
Gas Natural de Juarez, S.A.
16 of September St. 240 E
CD. JUAREZ, CHIH.

In connection with the various steps taken toward the construction of a natural gas distribution system for domestic, commercial and industrial purposes in the City of Juarez Chih., I am glad to advise you that this institution has no inconvenience that the corporation under your management, imports and distributes the aforementioned fuel (combustible) as long as Petroleos Mexicanos does not have a gas line that will permit us to serve natural gas in Juarez, CHIH.

I repeat to you the assurance of my polite and special consideration.

(Sgd) JORGE ESPINOS, DE LOS REYES
Attorney Jorge Espinosa De Los Reyes
Commercial Sub-Director

* * * * *

SECRETARY
OF
INDUSTRY AND COMMERCE

Francisco Rodriguez Gomez, official Mayor of the Secretary of Industry and Commerce certifies that in the open files of this Secretary the company Gas Natural de Juarez, S.A., has filed, among others, the following documents:

- a).—Testimony of the public charter of the above mentioned company in which there is included the authorization for its corporate existence, given by the Secretary of Exterior Relations, and it is stated that the corporate purpose is the distribution of natural gas in the City of Juarez, Chih.
- b).—The application for authorization by this Secretary for the construction of the natural gas distribution system and in official letters 4-148 and 10920 of April 1 and October 11, 1965, it was declared that this Secretary had no inconvenience for the beginning of construction conditioning that the authorization for use and employment of the equipment and corresponding systems will be given after the technician of this Secretary renders his report.
- c).—Copy of the letter of May 10, 1965 in which the decentralized company "Petroleos Mexicanos" advises Gas Natural de Juarez, S.A., that they have no objection to the importation and distribution of the mentioned fuel as long as this decentralized organization does not have a gasoline that allows it to furnish natural gas to Juarez.
- d).—A copy of protocolized resolution in which the stockholders obligated themselves to raise the company's

(286)

capital to \$1,000,000 pesos. Likewise several other documents in which the company declares that it has sufficient capital to complete the construction program.

- e).—Minute inspection completed by the personnel of this Secretary in which it is certified that this Company has the technical ability to finish the construction of the system.

283

Pursuant to the above-mentioned inspections we have verified the completion and installation of the distribution system in Zone 1 in detail in accordance with the letter 4-148 with 3,200 domestic services, therefore being satisfied that tests for leaks and security have been satisfactorily made, the corresponding authorization for use and operation of that zone will be immediately furnished. Later such authorization will be extended to other zones that are being completed and satisfactorily tested.

This document is expedited at the request of the interested company for them to use at their convenience on this November 17, 1965.

(Sgd) FRANCISCO RODRIGUEZ GOMEZ

* * * * *

286

CAMARA NACIONAL DE LA INDUSTRIA
DE TRANSFORMACION

November 10, 1965

TO WHOM IT MAY CONCERN:

Please be advised that the firm Gas Natural de Juarez, S.A. is installing a pipeline system to service 50,000

(286)

openings for natural gas in a period of 5 years, previous authorization from Secretaria de Industria y Comercio.

For this reason we are giving Gas Natural de Juarez our support for it will be a great service to the people of Cd. Juarez, giving the following comments:

1. Gas Natural de Juarez, S.A. will give the service the Industrial zone requires for its development.

2. The savings the people of Juarez will have could be of 50% of the present expense for this service.

3. The projects Gas Natural de Juarez will be in conditions to supply the agricultural demands in the Valley of Juarez, providing fuel for the motors that at the present time are using butane gas.

4. To this date and during a period of 6 months said company has installed already 3,200 domestic connections and compared with the company that is operating now and has installed only 5,300 connections since 1902 has demonstrated best technical and economic work and will continue with its plan for completion of same.

The above comments are given to advise that this Institution supports Gas Natural de Juarez, S.A. to realize its plans.

Sincerely,

C. N. I. T.

DELEGACION CD. JUAREZ

* * * * *

288

CAMARA NACIONAL DE LA INDUSTRIA
DE LA CONSTRUCCION
OFICINA EN CD. JUAREZ, CHIH.
CALLE NICARAGUA NO. 122 NTE.

FEDERAL POWER COMMISSION
WASHINGTON, D. C.
UNITED STATES OF AMERICA

Gentlemen:

This is to Certify that this company GAS NATURAL DE JUAREZ, S. A., has been working on various installations in this City using the best methods and first class material available according to Direccion de Gas de la Secretaria de Industria y Comercio's dispositions as it is shown in the certificates that capable inspectors approved.

Without any further comment, we remain,

Very truly yours,

CAMARA NACIONAL DE LA INDUSTRIA
DE LA CONSTRUCCION,
OFICINA EN CD. JUAREZ, CHIH.

For

Jose I. Ortega
Ing. Roberto M. Gamboa M.

Atty. Lupercio Garza Ramos, Notary Public No. 8 for Distrito Bravos, Chihuahua State, Mexico, certifies that above signature of Sr. Jose I. Ortega is his signature, and said paper was signed before me in Cd. Juarez, Chih., at 16 November 1965.

Notary Public No. 8

Lic. Lupercio Garza Ramos

• • • • •

(291)

291

CAMARA NACIONAL DE COMERCIO
DE CIUDAD JUAREZ

November 10, 1965

No. 1461/2.1.4

TO WHOM IT MAY CONCERN:

Please be advised that the firm GAS NATURAL DE JUAREZ, S.A. previous authorization from Direccion general de Gas, Secretaria de Industria y Comercio, actually is introducing a pipeline system for natural gas distribution. Following plans said firm will install approximately 50,000 openings for houses, commercial and industrial in a period of 5 years.

Mentioning the following points and the trascendental matter of the service that Gas Natural de Juarez is doing we are supporting for it is in favor of the people of this city:

1. The service that the company will give to the users of natural gas will be of 50% savings for them.
2. Gas Natural de Juarez S.A., has offered before this Institution to install the openings for the service to grounds of Parque Industrial in order for them to have the service and consequently its development and industrialization of Cd. Juarez.
3. According to the projects that the company has, they will install the main openings in a future not too far close that the irrigating water wells in the valley of Juarez which means that they will have a great help in the service and will cut down the costs of irrigation in agricultural production in pumps that are now using Butane gas at a higher price than natural gas.

(295)

4. To this date the company has installed in a period of 6 months 3,200 openings for domestic service and commercial which means that the competitor, the company that now operates in this city has installed only 5,300 since its foundation in 1902 consequently recognizing this company's plans for development and believing will go ahead with the work following the instructions and contract approved to Gas Natural de Juarez by Secretaria de Industria y Comercio.

For the reasons above mentioned, we are supporting in every way Gas Natural de Juarez to realize their plans.

Sincerely,

CAMARA NACIONAL DE COMERCIO

* * * * *

295

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HONORABLE DAVID S. BLACK
Acting Chairman
Federal Power Commission
Washington, D. C. 20426

Dear Mr. Chairman:

This is in response to your letter of November 12, 1965, in which you requested the views of the Department of Defense regarding the application of Del Norte Natural Gas Company, Docket No. CP66-106, for a permit for the operation and maintenance of natural gas facilities at the International Boundary between the United States and Mexico near El Paso, Texas. It is noted that the facili-

(295)

ties will be used to export natural gas from the United States into Mexico.

The language of the draft permit enclosed with your letter is acceptable to the Department of Defense. In accordance with the authority delegated by the Secretary of Defense on September 5, 1958, I recommend the issuance of the permit as referred to above.

Sincerely yours,

EDWARD J. SHERIDAN
Deputy Assistant Secretary of Defense
(Properties and Installations)

296

DEPARTMENT OF STATE
WASHINGTON

November 26, 1965

Dear Mr. Black:

Thank you for forwarding for the Department's consideration with your letter of November 12, 1965 (Docket No. CP66-106, Del Norte Natural Gas Company), a draft of a permit proposed to be issued to the Del Norte Natural Gas Company. The permit would authorize connection, operation, and maintenance of natural gas facilities on the international boundary with Mexico near El Paso, Texas, for the exportation of natural gas to Mexico.

The Department has consulted the United States Commissioner on the International Boundary and Water Commission, whose report to the Department is enclosed. Provided that you concur with Commissioner Friedkin and are able to comply with his suggestions, the Department

(297)

perceives no foreign policy reason to withhold issuance of the permit.

Sincerely yours,

For the Acting Secretary of State
TERRANCE G. LEONHARDY
Director
Office of Mexican Affairs

Enclosure:

Letter, 11/23/65.

Mr. David S. Black
Acting Chairman,
Federal Power Commission,
Washington, D. C. 20426.

297

INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO
818 Southwest Center
300 Main Drive
El Paso, Texas 79950

Office of the Commissioner
United States Section

Mailing Address:
P.O. Box 1859
November 23, 1965

AIR MAIL
SPECIAL DELIVERY

Dear Mr. Leonhardy:

Mr. T. R. Martin's memorandum to me of November 17, 1965, encloses a letter of November 12 received from the Federal Power Commission in connection with an application of Del Norte Natural Gas Company for natural gas

(297)

facilities crossing the international boundary, Docket No. CP66-106, and a file in connection with the subject. He requests our suggestions with respect to the nature of a reply that might be made to the FPC.

The applicant has furnished detailed plans of the crossing proposed at the point designated on Exhibit "B" of the file as the "Ascarate Park Area". This Section is of the opinion that the proposed works at that location would not be in contravention of existing treaty provisions. The said plans have been submitted to the Mexican Commissioner, but his approval has not as yet been received.

Regarding the crossing designated as being at the "Cordova Island Area" on Exhibit "B", applicant has not as yet submitted final plans for the works to be constructed and, therefore, the anticipated plans have not been reviewed by either Section. In view of the lack of our Commission's approval with respect to both this point and the Ascarate Park area crossing, it is requested that the Presidential Permit contain a provision that it is subject to approval by the International Boundary and Water Commission of the detailed construction plans of the Permittee.

Additionally for consideration is the fact that the proposed works will, at the Cordova Island area, cross lands which the United States will be required to obtain for transfer to Mexico pursuant to the Chamizal Convention. In this connection, it is noted that on page 6 of the Lease (which is part of the file) between the Southern Union Gas Company, as Owner, and Del Norte Natural Gas Company, as Lessee, it is stated that portions of the Southern Union pipeline "are or will be located in the Chamizal Area that is to be transferred to the United Mexican States. . ." and that Southern Union may take any and

all steps deemed appropriate by it to obtain compensation for reimbursement from the United States therefor.

Terrence G. Leonhardy, Esquire,
Director, Office of Mexican Affairs, ARA/MEX,
Room 2242, Department of State,
Washington, D. C. 20520.

298

There must also be taken into consideration the fact that the United States will be required to construct a new river channel demarcating the new boundary line between the two countries, relocate three railroad lines, and will probably construct a new border highway and relocate a portion of the Franklin Canal.

The United States should guard against increased costs to it resulting from the issuance of a Presidential Permit which would not have occurred if such Permit had not been granted. It is, therefore, recommended that the issuance of the Presidential Permit be conditioned on there being an agreement among Southern Union Gas Company, Del Norte Natural Gas Company, and this Section on behalf of the United States, providing that the Permit, rights obtained, and works hereafter constructed necessary to accomplish the objective of furnishing natural gas to Mexico, shall not in any way be considered to have enhanced any interest in the lands to be acquired by the United States for transfer to Mexico pursuant to said Convention, and shall result in no increase in the cost or liability of the United States as a consequence of international or domestic works constructed by the United States, or from any other cause whatsoever, over and above those which would have resulted had the Permit not been issued.

(298)

In summary, the foregoing recommendations could be accomplished by addition to the proposed Permit of substantially the following:

"This Permit is subject to approval of the International Boundary and Water Commission, United States and Mexico, of the detailed construction plans of the Permittee, and is further subject to the condition that an agreement be entered into among the Southern Union Gas Company, the Del Norte Natural Gas Company, and the United States of America, represented by the United States Commissioner of said Commission, providing that this Permit, rights obtained, and works constructed necessary to accomplish the furnishing of natural gas to Mexico, shall not in any way be considered to have enhanced any interest in the lands to be acquired by the United States for transfer to Mexico pursuant to the Convention between the United States of America and Mexico for the Solution of the Problem of the Chamizal, effective January 14, 1964, and shall result in no increase in the cost or liability of the United States as a consequence of international or domestic works hereafter constructed by the United States, or from any other cause whatsoever, over and above those which would have resulted had this Permit not been issued."

In accordance with Mr. Martin's request, the file is returned herewith, since an amendment of the draft Order has been recommended.

Cordially,

J. F. FRIEDKIN
Commissioner

Enclosure:
FPC File.

FEDERAL POWER COMMISSION

El Embajador de Mexico saluda atentamente al Excelentísimo Señor Secretario de Estado y tiene el honor de referirse al caso que a continuación se expone.

La Federal Power Commission, en aviso distribuido el 28 de octubre anterior (Notice of Applications, Docket Nos. CP66-104, CP66-106, CP66-105, y G-513), dio a conocer la solicitud de la compañía Del Norte Natural Gas Company, de que se le autorizara la exportación de gas natural a los Estados Unidos Mexicanos. En firma Juárez Gas Company, S. A., de Ciudad Juárez, Chihuahua, elevó una petición ante la Federal Power Commission el 5 de noviembre solicitando se le permita intervenir en las audiencias que efectúe dicha Comisión, por considerar que sus intereses y los de los consumidores de gas natural en Ciudad Juárez se verían afectadas en caso de que se concediese a la firma Del Norte Natural Gas Company la autorización correspondiente.

Esta última firma comercial solicitó a la Federal Power Commission en documento fechado el 19 de noviembre, que se niegue a la Juárez Gas Company su petición de intervenir en este asunto.

El Embajador de Mexico estima que la Juárez Gas Company tiene base para ser escuchada por la Federal Power Commission de acuerdo con la garantía de audiencia constitucionalmente protegida en Mexico y en Estados Unidos y, por lo tanto, suplica al Excelentísimo Señor Secretario de Estado que, de no haber inconveniente, tenga la bondad de interponer sus buenas oficio ante la Federal Power Commission, con la mira de que con acor-

(299)

dada on forma favorable la peticion de intervencion de la Juarez Gas Company.

Washington, D. C., 8 de diciembre de 1965.

299-A

DIVISION OF LANGUAGE SERVICES
(Translation)

40912
LS No. T-3/R-XX
Spanish
5099

The Ambassador of Mexico presents his compliments to His Excellency the Secretary of State and has the honor to refer to the following case:

In a notice distributed on October 28 last (Notice of Applications, Docket Nos. CP66-104, CP66-106, CP66-105, and G-513), the Federal Power Commission made known the application of the Del Norte Natural Gas Company for authorization to export natural gas to the United Mexican States. The Juarez Gas Company, S.A., in Ciudad Juarez, Chihuahua, filed a petition with the Federal Power Commission on November 5, requesting permission to participate in the hearings to be conducted by that Commission because it considered that its interests and those of the natural gas consumers in Ciudad Juarez would be affected if the Del Norte Natural Gas Company were granted the authorization in question.

In a document dated November 19, the latter firm requested the Federal Power Commission to refuse to grant the Juarez Gas Company its request to participate in this case.

The Ambassador of Mexico thinks that the Juarez Gas Company has good reason to be heard by the Federal

(299-B)

Power Commission because of the guarantee of a hearing that is constitutionally protected in Mexico and the United States, and, consequently, he requests that, if there is no objection, His Excellency the Secretary of State be good enough to use his good offices with the Federal Power Commission so that the Juarez Gas Company's request for participation in the hearings may be granted.

[Initialed]

Washington, D.C., December 8, 1965

299-B

DEPARTMENT OF STATE
WASHINGTON

December 15, 1965

Dear Mr. Young:

I refer to your conversation with Mr. Zucca of my Office on December 14, concerning a note by the Mexican Embassy in support of a petition filed by the Juarez Gas Company asking to be heard before the Federal Power Commission in the Southern Union Gas Company case (Docket No. G-513, *et al*).

I enclose a translated copy of the Mexican note on this matter for your consideration. I would appreciate being informed on the outcome of the Embassy's request in order that a reply can be prepared to the note.

Sincerely,

TERRANCE G. LEONHARDY
Director
Office of Mexican Affairs

Enclosure:

As Stated.

Mr. Donald Young
Special Assistant to the Chairman,
Federal Power Commission,
Stop 22.

(299-C)

299-C

December 29, 1965

Dear Mr. Leonhardy:

This is in response to your letter of December 15, 1965, enclosing a translation of the Mexican note concerning the application for authorization to continue the export of gas in Docket No. G-513, *et al.* The note was brought to the attention of the Commission before it acted in this matter.

I am enclosing a copy of the Commission's order issued today in this proceeding. I believe that you will find the order to be self-explanatory with regard to the position of the Commission where there is a conflict among distributors whether located within one of the United States or within a foreign country.

Sincerely,

/s/

DONALD L. YOUNG
Special Assistant
to the Chairman

Enclosure
Terrance G. Leonhardy, Director
Office of Mexican Affairs
Department of State
Washington, D. C.
DLY:bh

G-513

300

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L.
J. O'Connor, Jr., Charles R. Ross,
David S. Black, and Carl E. Bagge.

Docket No. CP66-104

Docket No. G-513

DEL NORTE NATURAL GAS COMPANY
SOUTHERN UNION GAS COMPANY

**Order Authorizing Exportation of Natural Gas, Terminating
Authorization to Export Natural Gas and Denying Petition
for Leave to Intervene.**

(Issued December 29, 1965)

On October 12, 1965, Del Norte Natural Gas Company (Applicant) filed in Docket No. CP66-104 an application, as supplemented on November 18, 1965, pursuant to Section 3 of the Natural Gas Act for authorization to export natural gas from the United States to Mexico, all as more fully set forth in the application as supplemented.

Applicant proposes to export natural gas as successor in interest to Southern Union Gas Company (Southern Union) which was authorized to export natural gas by order issued January 2, 1945, in Docket No. G-513 (4 FPC 826). Concurrently with the subject application Applicant filed in Docket No. CP66-106 an application pursuant to Executive Order No. 10485 for a permit authorizing the operation and maintenance of facilities at the international boundary for the exportation of gas. On October 18, 1965, Southern Union filed in Docket No. G-513 an application for revocation of its Presidential Permit and authorization to export natural gas.

(300)

Applicant will sell natural gas to Juarez Gas Company, S.A. (Juarez Gas), the sole distributor presently serving Ciudad Juarez, Chihuahua, Mexico, and will initiate the sale and delivery of natural gas to Gas Natural de Juarez, S.A. (Gas Natural), a new distributor which will render natural gas service in Juarez. Estimated peak day and annual natural gas requirements of Juarez Gas and Gas Natural in Mcf for the first three years of operation by Applicant are estimated¹ as follows:

301

<i>Juarez Gas</i>	<i>First Year</i>	<i>Second Year</i>	<i>Third Year</i>
Annual	367,500	378,000	388,500
Peak Day	4,684	4,819	4,935
<i>Gas Natural</i>			
Annual	2,543,153	2,765,028	3,036,138
Peak Day	15,230	18,037	21,084

The rates proposed to be charged Gas Natural are 1.6243 cents per cubic meter for all gas resold by said company for domestic and commercial use and 1.2535 cents per cubic meter for all gas resold by said company for industrial use. The rates proposed to be charged Juarez Gas are 34.85 cents per Mcf plus 50 percent of the excess above 40.85 cents per Mcf charged by Juarez Gas to ultimate consumers, including any minimum charge and any demand or readiness-to-serve charge, for gas sold for industrial use and 45.35 cents per Mcf for gas sold for all other purposes. There is a minimum charge of \$25.00 per month per industrial customer.

¹ These estimates are contained in Exhibit I to the application filed in Docket No. CP66-105 by El Paso Natural Gas Company and El Paso Gas Transportation Corporation. These companies propose to sell and deliver gas to Applicant for resale and exportation.

Applicant will export gas through facilities leased from Southern Union. Southern Union has assigned to Applicant Southern Union's rights under its contract with Juarez Gas.

Concurrently herewith a permit authorizing Applicant to maintain and operate facilities at the international boundary will be released in Docket No. CP66-106, and El Paso Natural Gas Company and El Paso Gas Transportation Corporation will be authorized in Docket No. CP66-105 to sell and deliver natural gas to Applicant for resale and exportation. Southern Union's Presidential Permit and authorization to export natural gas will be revoked.

After due notice no notice of intervention has been received. On November 5, 1965, Juarez Gas filed in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106 a petition for leave to intervene in opposition to the granting of the application in each docket. Juarez Gas contends that it is not consistent with the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. The Commission cannot assume the obligation of determining local franchise rights in Mexico. It is not the purpose of regulation under the Natural Gas Act to deal with franchise rights relating to the distribution of natural gas in foreign countries. In fact, we have held that it is not within the Commission's province to determine which of two

302

distributors in the United States has the legal right to distribute natural gas in a community within a state where the issue has been raised. We have left the resolution of such controversies to the appropriate authorities of the

(302)

state where the parties operate. See *American Louisiana Pipe Line Company, et al.*, Docket No. G-2306, *et al.* (28 FPC 41).

Juarez Gas alleges that Gas Natural is a "purely paper company", that the applications make no showing that Gas Natural will be able to dispose of the gas exported by Applicant, that it is probable that Gas Natural will not be able to secure all of the federal, state and municipal authorizations to distribute gas, and that the import authorization will be denied. Exhibits to the application filed in Docket No. CP66-105 indicate that Gas Natural has already begun construction of its distribution system under appropriate Mexican authorizations. The supplement filed November 18, 1965, to Applicant's applications indicates that some of the construction has been completed and that various authorizations have been received to undertake more construction. These are matters within the jurisdiction of the appropriate Mexican authorities and this Commission will not review them. The authorization issued to Applicant is conditioned upon the receipt of appropriate import authorization and is without prejudice to any action taken by any authority in Mexico.

The Federal Power Commission is not the proper forum in which Juarez Gas can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. This is, in essence, what Juarez Gas is seeking by its request to participate in these proceedings. Any determinations made by Mexican authorities having jurisdiction over such matters will be accepted by this Commission. Juarez Gas has failed to demonstrate that it has any interest in the subject applications which this Commission can consider, and it has failed to show any other reasons why it should be permitted to participate. Accordingly, the petition will be denied in each docket in which it is filed.

No petitions to intervene other than that filed by Juarez Gas have been received in Docket No. CP66-104.

The Commission finds:

The exportation of natural gas by Applicant, Del Norte Natural Gas Company, as hereinabove described and as more fully set forth in the application, as supplemented, in Docket No. CP66-104, will not be inconsistent with the public interest within the meaning of Section 3 of the Natural Gas Act provided that said exportation be on the terms and conditions hereinafter set forth:

303

(a) Applicant shall file statements or reports with the Commission from time to time under oath and in such details as the Commission may require with respect to the whole or any part of the instant export operation.

(b) The authorization granted herein is not transferable or assignable and shall remain in full force and effect only so long as Applicant continues the acts or operations herein authorized in accordance with the terms and conditions herein set forth.

(c) The authorization granted herein shall automatically terminate upon the termination or expiration of the contracts between Applicant and the gas purchasers attached as exhibits to or incorporated by reference in the subject application.

(d) Applicant shall not, during the term of the authorization granted by this order, materially change or alter its export operations without first obtaining the permission and approval of the Commission.

(e) In the event that Applicant should abandon or permanently cease for any reason whatsoever all or any part

(303)

of the instant export operation prior to the termination dates of the contracts described in (c) above, Applicant shall forthwith notify the Commission of said fact and the reason therefor.

(f) The authorization granted herein is conditioned upon Applicant's obtaining any necessary authorizations to import gas into the Republic of Mexico.

(g) The annual and peak day volumes of natural gas exported and sold by Applicant shall not exceed 3,424,638 Mcf and 26,019 Mcf, respectively.

The Commission orders:

(A) Authorization is granted to Applicant to export natural gas from the United States to the Republic of Mexico, as hereinabove described and as more fully set forth in the application, as supplemented, in Docket No. CP66-104, upon the conditions herein set forth and subject to the provisions of the Natural Gas Act and the Commission's Regulations issued thereunder.

(B) The authorization granted herein is conditioned upon Applicant's obtaining and is without prejudice to any authorizations issued by the Republic of Mexico for the importation of natural gas.

304

(C) The annual and peak day volumes of natural gas exported and sold by Applicant shall not exceed 3,424,638 Mcf and 26,019 Mcf, respectively.

(D) The export authorization heretofore issued in Docket No. G-513 is terminated as of the date Applicant commences the service authorized herein.

(E) Inasmuch as Juarez Gas has not shown that its participation in the proceedings in Docket Nos. G-513,

(305)

CP66-104, CP66-105 and CP66-106 is in the public interest or that the matters set forth in the petition affect interstate commerce or can properly be considered by the Commission in determining the merits of the subject applications, the petition is denied.

By the Commission.

(Seal)

JOSEPH H. GUTRIDE,
Secretary.

305

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L.
J. O'Connor, Jr., Charles R. Ross,
David S. Black, and Carl E. Bagge.

Docket No. CP66-105

EL PASO NATURAL GAS COMPANY
EL PASO GAS TRANSPORTATION CORPORATION

**Findings and Order after Statutory Hearing Issuing Certificate
of Public Convenience and Necessity and Permitting and
Approving Abandonment of Service.**

(Issued December 29, 1965)

On October 12, 1965, El Paso Natural Gas Company (Gas Company) and El Paso Gas Transportation Corporation (Transportation Corporation) filed in Docket No. CP66-105 a joint application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for, on the part of Gas Company, permission and approval to abandon the sale of natural gas to Southern Union Gas Company (Southern Union) and a certificate of public convenience and necessity authorizing the sale and delivery of natural gas to Del Norte Natural Gas Company (Del Norte), and

(305)

for, on the part of Transportation Corporation, permission and approval to abandon the transportation of natural gas for Southern Union and for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas for Del Norte, all as more fully set forth in the application.

Gas Company proposes to sell natural gas to Del Norte which Del Norte will export and sell to Juarez Gas Company (Juarez Gas) and Gas Natural de Juarez (Gas Natural) for resale and distribution in Ciudad Juarez, Chihuahua, Mexico, a community adjacent to El Paso, Texas. Del Norte will export and sell gas at four points on the international boundary between United States and Mexico. Del Norte proposes to succeed to Southern Union in the exportation of natural gas to Juarez Gas at two of the export points. Southern Union presently exports and sells gas at these points which is sold by Gas Company and transported by Transportation Corporation. Gas Company and Transportation Corporation herein seek permission and approval to abandon this sale and transportation. Del Norte will initiate exportation and sale at the other two points to Gas Natural.

306

Natural gas available to Del Norte from Gas Company is deliverable at a point situated in El Paso, Texas. Transportation Corporation seeks authorization to transport such gas for the account of Del Norte from the point at which it is deliverable by Gas Company to three points of delivery to Del Norte on Transportation Corporation's existing system in El Paso. At each of the points of delivery to Del Norte, Transportation Corporation proposes to construct and operate a standard orifice-type measuring and regulating station. The estimated cost of

said facilities is \$32,100 to be financed from working funds.

During the third full year of service, the estimated peak day and annual volumes to be exported and sold by Del Norte are 26,019 Mcf and 3,424,638 Mcf, respectively. Sales by Gas Company to Del Norte will be made pursuant to Rate Schedules A-3 and B-2 of Gas Company's Gas Tariff, Original Volume No. 1. Transportation service to be performed by Transportation Corporation will be pursuant to Rate Schedule T-1 of Transportation Corporation's Gas Tariff, First Revised Volume No. 1.

Concurrently herewith an order authorizing Del Norte to export natural gas will be issued in Docket No. CP66-104 and a permit will be released in Docket No. CP66-106 authorizing the operation and maintenance of facilities at the international boundary by Del Norte.

After due notice a petition to intervene was filed in Docket Nos. G-513, CP66-104, CP66-105 and CP-106 by Juarez Gas Company. Said petition is denied in all dockets in the order issued in Docket No. CP66-104, *et al.*, concurrently herewith. No other petitions to intervene or notices of intervention have been received.

At a hearing held on December 22, 1965, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant, El Paso Natural Gas Company, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the

(306)

meaning of the Natural Gas Act as heretofore found by the Commission in its order of January 11, 1944, in Docket No. G-288 (4 FPC 486).

307

(2) Applicant, El Paso Gas Transportation Corporation, a Delaware corporation having its principal place of business in El Paso, Texas, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order of August 31, 1948, in Docket No. G-287 (7 FPC 886).

(3) The sale and transportation of natural gas hereinbefore described, as more fully described in the application in this proceeding, will be in interstate commerce subject to the jurisdiction of the Commission, and said transportation and sale and the construction and operation of facilities therefor are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(4) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(5) The construction and operation of facilities and the transportation and sale of natural gas hereinbefore described, as more fully described in the application herein, are required by the public convenience and necessity, and a certificate therefor should be issued as hereinafter ordered and conditioned.

(6) Public convenience and necessity require that the certificate issued hereinafter and the rights granted thereunder should be conditioned upon Applicant's compliance with all applicable Commission Regulations under the

Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(7) The service proposed to be abandoned as hereinbefore described, all as more fully described in the application in this proceeding, is subject to the jurisdiction of the Commission, and the abandonment thereof is subject to the requirements of Subsection (b) of Section 7 of the Natural Gas Act.

(8) The abandonment hereinbefore described is permitted by the public convenience and necessity and should be approved as hereinafter ordered.

308

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Applicants to construct and operate facilities and to sell and transport natural gas as hereinbefore described, all as more fully described in the application in this proceeding, upon the terms and conditions of this order.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of such Regulations.

(C) The construction authorized in paragraph (A) above shall be completed and the transportation and sale of natural gas shall commence, as provided by paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act within six months from the date of this order.

(308)

(D) Permission for and approval of the abandonment of the service hereinbefore described, all as more fully described in the application in this proceeding, are granted.

By the Commission.

(Seal)

JOSEPH H. GUTRIDE,
Secretary

* * * * *

310

**Permit Authorizing
Del Norte Natural Gas Company
El Paso, Texas
To Operate, Maintain and Connect
Natural Gas Transmission Facilities at
the International Boundary between
the United States and Mexico**

(Federal Power Commission—Docket No. CP66-106)

* * * * *

Del Norte Natural Gas Company (hereinafter referred to as Permittee), a corporation organized and existing under the laws of the State of Texas with principal offices located at 1026 Southwest National Bank Building, El Paso, Texas, filed in Docket No. CP66-106 on October 12, 1965, an application pursuant to Executive Order No. 10485, dated September 3, 1953, for permission to operate, maintain and connect the natural gas transmission facilities described in *Article 2* below on the international border between the United States of America, hereinafter referred to as the United States, and Mexico.

Permittee, by application filed in Docket No. CP66-104 on October 12, 1965, requested authorization, pursuant to Section 3 of the Natural Gas Act, to export natural gas to

Mexico by means of the facilities described in *Article 2* below.

311

By letter dated November 26, 1965, the Secretary of State, and by letter dated November 24, 1965 the Secretary of Defense favorably recommended that the permit be granted as hereinafter provided.

Upon consideration of this matter, the Federal Power Commission, hereinafter referred to as Commission, finds that the issuance of a permit as hereinafter provided is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order No. 10485, dated September 3, 1953, and the Commission's General Rules and Regulations, permission is hereby granted to Permittee to operate, maintain, and connect the natural gas transmission facilities described in *Article 2* below at the proposed location on the international border between the United States and Mexico.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Power Commission, and may be amended by the Federal Power Commission upon proper application therefor.

Article 2. The facilities covered by and subject to this Permit, which facilities are to be leased by Southern Union Gas Company (Southern Union) to Applicant, consist of the following:

- (a) 5,210 feet of 12-inch transmission line and a measuring and regulating station, to be installed by Southern Union;

312

(b) 7,000 feet of 6-inch transmission line and a measuring and regulating station, to be installed by Southern Union;

(c) An addition to existing facilities consisting of 500 feet of 6-inch and 1,800 feet of 4-inch transmission line, to be installed by Southern Union;

(d) Existing facilities consisting of 2,190 feet of 6-inch transmission line in place.

No substantial change shall hereafter be made in the facilities and operations authorized by this Permit until such change shall have been approved by the Commission.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the exportation of natural gas to Mexico only in the amount, at the rate, and in the manner authorized by the Commission under Section 3 of the Natural Gas Act.

Article 4. The operation, maintenance and connection of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States for such purposes. The Permittee shall allow officers and employees of the United States showing proper credentials free and unrestricted access into, through, and across the land occupied by said facilities in the performance of their official duties.

313

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to

render navigation through such waters free and unrestricted.

Article 6. The Permittee shall be liable for all damage occasioned to the property of others by the operation or maintenance of the aforesaid facilities and connections, and in no event shall the United States be liable thereof. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this permit.

Article 7. Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas imported or exported or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state or local agency requesting such information.

Article 8. Neither this Permit nor the facilities and connections, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the

314

facilities and connections used hereunder by the operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities and connections authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittees shall maintain the facilities and connections, and every part thereof, in a condition of repair for the efficient operation of said facilities and connections in

(314)

the transportation of natural gas, and shall make all necessary renewals and replacements.

Article 9. Upon the termination, revocation, or surrender of this Permit, the facilities herein authorized shall be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands

315

it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay to the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to approval of the International Boundary and Water Commission, United

States and Mexico, of the detailed construction plans of the Permittee, and is further subject to the condition that an agreement be entered into among the Southern Union Gas Company, the Del Norte Natural Gas Company, and the United States of America, represented by the United States Commissioner of said Commission, providing that this Permit, rights obtained, and works constructed necessary to accomplish the furnishing of natural gas to Mexico, shall not in any way be considered to have enhanced any interest in the lands to be acquired by the United States for transfer to Mexico pursuant to the

316

Convention between the United States of America and Mexico for the Solution of the Problem of the Chamizal, effective January 14, 1964, and shall result in no increase in the cost of liability of the United States as a consequence of international or domestic works hereafter constructed by the United States, or from any other cause whatsoever, over and above those which would have resulted had this Permit not been issued.

Article 12. The Presidential Permit issued pursuant to Executive Order No. 8202 to Southern Union Gas Company on August 23, 1944, authorizing the operation and maintenance of certain facilities which Permittee is herein authorized to operate and maintain is revoked as of the date Permittee commences the acts and operations authorized herein.

IN WITNESS WHEREOF, I, David S. Black, have hereunto signed my name this 28 day of December 1965, in the City of Washington, District of Columbia.

David S. Black
Acting Chairman of the Federal Power
Commission

• • • • •

318

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

In the Matters of

Docket No. G-513

SOUTHERN UNION GAS COMPANY

Docket No. CP66-104

DEL NORTE NATURAL GAS COMPANY

Docket No. CP66-105

EL PASO NATURAL GAS COMPANY

EL PASO GAS TRANSPORTATION CORPORATION

Docket No. CP66-106

DEL NORTE NATURAL GAS COMPANY

Motion for Stay

Juarez Gas Company, S. A., having an interest in Southern Union Gas Company, Docket No. G-513, El Paso Natural Gas Company and El Paso Gas Transportation Corporation, Docket No. CP66-105 and Del Norte Natural Gas Company, Docket No. CP66-104 and CP66-106 and having been adversely affected and aggrieved by issuance of orders in the said dockets on December 28 and 29, 1965 hereby Moves the Federal Power Commission to issue a Stay of the effectiveness of the aforesaid Orders pending consideration and disposition of the Application of Juarez Gas Company, S. A. for Rehearing, filed concurrently herewith. In Support of this Motion for Stay, Juarez Gas Company represents:

319

1. Juarez Gas has this day filed with the Federal Power Commission its Application for Rehearing of Orders of this Commission issued in the above-captioned proceedings on December 28 and 29, 1965. Said Application for Rehearing sets forth in detail, pursuant to Section 19(a) of

the Natural Gas Act and Section 1.34 of the Rules of Practice and Procedure of this Commission, the basic and fundamental errors of law, substantive and procedural, committed by the Commission in connection with the procedural and substantive disposition of the aforesaid Applications, including the denial of the Petition of Juarez Gas for intervention therein, which errors render the said Orders null, void and of no effect whatsoever. Said Application for Rehearing, having been made a part of the official files of the Commission is incorporated herein and made a part hereof by reference to said official files of this Commission as though set forth herein in full or appended hereto.

2. The errors of this Commission which require the granting of the Application for Rehearing are so patent, and the violation of the requirements of the Natural Gas Act, the Administrative Procedure Act, Executive Order No.

320

10485, judicial decisions, and the requirements of substantive and procedural due process are so clear that there is no doubt that Juarez Gas, Movant herein, will prevail.

3. If a stay is not granted pending consideration and granting of the Application for Rehearing, it is probable that Juarez Gas will suffer irreparable injury by reason of El Paso Natural Gas Company and El Paso Gas Transportation Corporation, Del Norte Natural Gas Company and Southern Union Gas Company proceeding forthwith with the construction, operation, maintenance and connection of facilities which are the subject matter of these proceedings and of the Orders of December 28 and 29, 1965, which improperly and unlawfully authorized the maintenance, operation and connection with facilities of Gas Natural de Juraez, S. A.

4. Issuance of the Stay requested herein will not be detrimental to the interests of any party hereto. On the other hand, the extent of injury and aggrievement to the interest of Juarez Gas that would be occasioned by actions

(320)

described in paragraph No. 3 hereof cannot be estimated. Nor can the irreparable damage to Applicants be calculated by Juarez Gas when, upon

321

granting of the Rehearing and ultimate denial of the Applications, they will be required to undo all of actions taken in the interim and all conditions will be required to return to *status quo ante*, as under the law is and will be required when the Federal Power Commission enters its Order granting the Application for Rehearing and ordering the aforesaid orders of December 28 and 29, 1965 to be null, void and of no effect.

WHEREBY, Juarez Gas moves to Commission to enter an Order staying the effectiveness of the Orders issued December 28 and 29, 1965, in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106, pending consideration and disposition of the Application of Juarez Gas for Rehearing.

Respectfully submitted,

JUAREZ GAS COMPANY, S. A.

/s/ Jesus Anatole Silva

By

JESUS ANATOLE SILVA

Av. 16 de Septiembre 219 Pte.

Cd. Juarez, Chih., Mexico

/s/ William J. Grove

WILLIAM J. GROVE

1155 Fifteenth Street, N. W.

Washington, D. C. 20005

Of Counsel:

Grove, Paglin, Jaskiewicz,

Gilliam and Putbrese

1155 Fifteenth Street, N. W.

Washington, D. C. 20005

Dated: January 14, 1966

• • • • •

324

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

In the Matters of
Docket No. G-513

SOUTHERN UNION GAS COMPANY

Docket No. CP66-104

DEL NORTE NATURAL GAS COMPANY

Docket No. CP66-105

EL PASO NATURAL GAS COMPANY
EL PASO GAS TRANSPORTATION CORPORATION

Docket No. CP66-106

DEL NORTE NATURAL GAS COMPANY

**Application of Juarez Gas
Company, S. A. for Rehearing**

Juarez Gas Company, S. A., being aggrieved and having interests adversely affected by Orders of the Federal Power Commission issued December 29, 1965 in *Southern Union Gas Company*, Docket No. G-513, *Del Norte Natural Gas Company*, Docket Nos. CP66-104 and CP66-105 and *El Paso Natural Gas Company* and *El Paso Transportation Corporation*, Docket No. CP66-105, and issued on December 28, 1965 in *Del Norte Natural Gas Company*, Docket No. CP66-106, files this Application for Rehearing of each of said Orders, pursuant to and in accord with Section 19(a) of the Natural Gas Act and Section 1.34 of the Rules of Practice and Procedure, and requests the Commission upon consideration thereof to correct and rectify the grievous

325

and basic errors of law by reversing and holding null, void and of no effect the said Orders of December 28 and 29, 1965, entering an appropriate Order granting Juarez

(325)

Gas Company proper status as a party to the aforesaid proceedings, setting the within proceedings for full hearing, and, prescribing lawful and proper hearing procedures. In support of this Application for Rehearing, Juarez Gas Company represents:

I.

1. Juarez Gas Company, S. A., is the sole natural gas public utility distribution company rendering public utility service in the City of Juarez, State of Chihuahua, Republic of Mexico, and has been distributing, under present management, natural gas in the City of Juarez, since 1935. Pursuant to and in accord with the Notice of Applications issued by this Commission in the within dockets on October 28, 1965, Juarez Gas timely filed its Petition to Intervene setting forth therein facts clearly demonstrating that it, under the Natural Gas Act and judicial decisions, has an interest in the within proceeding which would be adversely affected by an order or orders of the Federal Power Commission if the respective Applications and Presidential Permit were issued as proposed. The Commission, on December 22, 1965, contrary to

326

the public Notice of October 28, 1965, held a non-public hearing and on December 28, 1965, in Docket No. CP66-106, issued the Presidential Permit therein requested and, on December 29, 1965, issued its Orders granting the Applications proposed in the remaining dockets and denying the Petition of Juarez Gas to Intervene.

II.

The correct name and address of Applicant herein is:

Juarez Gas Company, S. A.
Av. 16 de Septiembre 219 Pte.
Cd. Juarez, Chih., Mexico

III.

The name, title and mailing address of persons upon whom all correspondence, communications, and other matters concerning this Application for Rehearing shall be served are:

William J. Grove, Attorney
1155 Fifteenth Street, N. W.
Washington, D. C. 20005
and
Jesus Anatole Silva
Gerente General
Av. 16 de Septiembre 219 Pte.
Cd. Juarez, Chih., Mexico

IV.

The Federal Power Commission, in issuing the December 28 and 29, 1965, Orders herein, and as to which

327

this Application for Rehearing is filed, erred as a matter of law in the following specific instances and matters:

1. Denying the Petition of Juarez Gas to Intervene in each of the necessarily interdependent Applications, where such Petition established that Juarez Gas was the present public utility into whose franchise area the volumes of natural gas here involved were intended ultimately to be served in competition with Juarez Gas, that Juarez Gas objected to cancellation of the Presidential Permit issued in Docket No. G-513 (4 FPC 826) wherein the Commission referred to earlier Commission authorizations and Presidential Permits to which Juarez Gas Company, S. A., was a party (see *Juarez Gas Company, S. A.*, Docket No. G-107, Order issued April 25, 1941 and *Texas Cities Gas Company and Juarez Gas Company, S. A.*, Docket No. G-107, Order

(327)

issued May 12, 1942 attached hereto, and made a part hereof and respectively marked Appendix A and Appendix B), that Juarez Gas objected to the unilateral assignment of the present gas supply contract with Southern Union to Del Norte, and that economic and financial disadvantages and detriment would result to Juarez Gas and to the ultimate consumers within the City of Juarez and environs. Such action denied to Juarez Gas rights

328

guaranteed by the Natural Gas Act, the Administrative Procedure Act, judicial decisions and due process of law.

2. Finding and concluding that Juarez Gas has not shown that its participation in the proceedings in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106, is in the public interest or that the matter set forth in the Petition of Juarez Gas to Intervene affect interstate commerce or that the matter set forth in the Petition of Juarez Gas to Intervene can properly be considered by the Commission in determining the merits of the aforesaid Applications, and in denying the Petition of Juarez Gas to Intervene in the aforesaid proceedings (Docket No. CP66-104, *et al.*, ordering paragraph (E)). The foregoing action of the Commission is contrary to law, contrary to fact, and denies Juarez Gas rights guaranteed by the Natural Gas Act, Administrative Procedure Act, judicial decisions and due process of law.

3. Finding and concluding that the Federal Power Commission is not the proper forum in which Juarez Gas can receive relief from alleged detriments (legal aggrievement and injury) to it occasioned by the distribution of natural gas by Gas Natural (mimeo, p. 3., Docket No. CP66-104,

329

et al.). This finding and conclusion of the Commission is contrary to law and judicial decision and denies to

Juarez Gas rights recognized and guaranteed to Juarez Gas in and by the Natural Gas Act, Administrative Procedure Act, judicial decisions and due process of law.

4. Finding and concluding that Juarez Gas has failed to demonstrate any interest in the subject Applications which the Commission can consider (mimeo, p. 3, Docket No. CP66-104, *et al.*). This finding and conclusion is contrary to law and judicial decisions and denies to Juarez Gas rights provided in and guaranteed by the Natural Gas Act, judicial decisions and due process of law.

Assignment of Error numbers 1, 2, 3 and 4 state the basic and fundamental errors in law of the Commission in denying the Petition of Juarez Gas Company to Intervene in the within dockets. The denial by the Commission is in direct conflict with long-established precedent.

The timely filed Petition of Juarez Gas to Intervene averred, *inter alia*, that Juarez Gas was the sole distributor of natural gas in the City of Juarez; has continuously expanded and extended distribution facilities and service within the City of Juarez; has proposed further expansion of facilities and service so as to render service to substantially all of the City of Juarez and environs;

330

in furtherance of and to implement such expansion has, as early as March, 1964, and subsequent thereto, filed appropriate plans as required by law, reasonably expects the entirety of such plans to be approved, and will continue to construct and inaugurate new and increased service in accord with such plans; granting of the within applications would adversely affect Juarez Gas and the present and future customers of Juarez Gas; no good purpose or reason exists or has been shown or averred warranting (a) assignment of the Southern Union-Juarez Gas

(330)

contract to Del Norte, (b) the construction and lease arrangement between Southern Union and Del Norte, (c) the minimum annual rental charges agreed upon between Southern Union and Del Norte in said construction and lease agreement; ruinous competition, duplication of facilities with concomitant adverse effects will result from approval of the Applications; no evidentiary showing has been made that granting of the applications (a) will not result in economic and financial ruins to Gas Natural, and (b) will not result in serious adverse economic consequences to Juarez Gas, the present distributor; Gas Natural has not and it is highly improbable that it ever will, secure all necessary consents to receive, operate and serve natural gas; and, upon an evidentiary record, developed upon full hearing, the resulting relevant and

331

material facts at issue would, consistent with applicable principles of law, compel denial by this Commission of the several Applications.

The Court, in *Cia Mexicana de Gas v. FPC*, 167 F.2d 804 (5th Cir. 1948), held that a public utility in Mexico, serving territory in which a new company proposed to distribute the natural gas proposed to be exported, was a person aggrieved. Thus, a motion by this Commission to dismiss was denied (167 F.2d at 805-6).

In *National Coal Association v. FPC*, 191 F.2d 462 (D. C. Cir. 1951), the Court held that one aggrieved has a "right to intervene." The Court stated (191 F.2d at 467):

"We think it clear that any person who would be 'aggrieved' by the Commission order, such as a competitor, is also a person who has a right to intervene."

See *American Communications Ass'n v. U.S.*, 298 F.2d 648 (2d Cir. 1962); *Virginia Petroleum Jobbers Association*

v. *FPC*, 259 F.2d 921, 925-6 (D. C. Cir. 1958); Davis, *Administrative Law Treatise*, Vol. 1, p. 567.

5. Holding a non-public hearing on December 22, 1965, without any notice thereof to Juarez Gas or to the public, contrary to and in direct contradiction of the prior public Notice of Applications issued October 28, 1965, which Notice specifically provided that

332

"Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the permit, certificates and permission and approval for the proposed abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given."

Agency action that substantially and prejudicially violates agency orders cannot stand. Agency action must be judged by the standards of conduct and procedures it prescribes. See *Vitarelli v. Seaton*, 359 U.S. 535, 540-4, 546 (1959); *Public Service Commission v. FPC*, 259 F.2d 140, 144 (D. C. Cir. 1961); *Sangamon Valley Television Corp. v. U.S.*, 269 F.2d 221, 224 (D. C. Cir. 1959).

Inasmuch as Juarez Gas, on November 5, 1965, did, in strict and complete compliance with the Commission Notice

(332)

of October 28, 1965, timely file its Petition to Intervene in each of the Applications noticed therein, the Commission action taken in direct contradiction

333

and contravention of extant notices, rules and regulations of orders, without notice to interested parties, the public and Juarez Gas in particular and without opportunity to protect procedural and substantive rights, is arbitrary, capricious, an abuse of discretion and unlawful, and deprives Juarez Gas of procedural and substantive rights guaranteed by the Natural Gas Act, Administrative Procedure Act, and due process of law.

6. Refusing and failing to provide Juarez Gas a hearing after due and proper notice upon issues of fact and law, resolution of which issues is a necessary legal prerequisite to Commission consideration and determination of public convenience and necessity and public interest under Sections 3, 7(b), 7(c) and 7(e) of the Natural Gas Act and Executive Order No. 10485, and which basic and fundamental issues of fact and law were raised specifically in the Petition of Juarez Gas to Intervene, thereby denying to Juarez Gas rights guaranteed by the Natural Gas Act, Administrative Procedure Act, and due process of law.

The basic and fundamental issues of fact and law raised in the Petition of Juarez Gas to Intervene included, *inter alia*, (a) the economic and financial feasibility of the proposals of El Paso Natural Gas Company and El Paso Transportation Corporation and Del Norte Natural Gas

334

Company, inasmuch as such issues relate to and are necessarily interdependent with and upon the ability of Gas Natural de Juarez to operate lawfully and economically and financially feasibly as a distribution company in the

City of Juarez, State of Chihuahua, Republic of Mexico; (b) the economic feasibility of the proposal and proposed operations of Gas Natural; (c) the financial feasibility of the proposal and proposed operations of Gas Natural; (d) the probable inability of Gas Natural to commence any service whatsoever because of and due to substantial violation by and failure of Gas Natural to comply with the basic law of Mexico, all of which portend rescission of the presently demonstrated limited temporary authorization to construct some facilities; (e) the right of Southern Union to assign to Del Norte, unilaterally and contrary to the desires of Juarez Gas, the Southern Union-Juarez Gas sale and public contract, and of this Commission to so alter the contractual relationship of the parties thereto, and (f) the complete interdependence of each Application and necessary dependence upon the ability of the distribution company, Gas Natural, to operate and function on an economically and financially sound basis.

335

The foregoing, having been raised by a person having an interest in the proceedings which would be and has been affected adversely by Commission action in the proceedings, require the Commission to exercise its duty under the Natural Gas Act after due notice to hear and consider, upon a formal record, evidence with respect thereto, as the same may be tested on cross-examination and/or completely refuted, rebutted, and destroyed by presentation of testimony and evidence by Juarez Gas, or any other party in interest.

7. Refusing arbitrarily, capriciously and unlawfully to provide opportunity for Juarez Gas to participate in a hearing and to develop on a formal record relevant material and compelling facts establishing that public convenience and necessity and the public interest require disapproval

(335)

of the several applications, thus denying Juarez Gas rights provided for and guaranteed by the Natural Gas Act, the Administrative Procedure Act, and due process of law.

8. Failing and refusing arbitrarily, capriciously and in an abuse of discretion to state fully and properly and so consider the issues of fact and law raised and presented by Juarez Gas in its Petition to Intervene (mimeo, pp. 2, 3, Docket No. CP66-104, *et al.*).

336

The Commission, improperly, without any basis in fact, and without regard to the basic and fundamental averments in the Petition of Juarez Gas has found that the Petition of Juarez Gas to Intervene would require this Commission to usurp the powers of the City of Juarez, the State of Chihuahua, and the Republic of Mexico regarding jurisdiction and power to determine legal rights to distribute natural gas within the City of Juarez and environs, and then concludes, upon such erroneously stated premise, that this Commission does not have jurisdiction over such matters.

Support is sought by the Commission for such erroneous conclusion by inappropriate reference to holdings of this Commission which relegate to appropriate states and subdivisions thereof the legal right to determine who shall distribute natural gas within a given community.

Juarez Gas does not suggest and has never suggested that it is the function of the Federal Power Commission to pass upon the comparative franchise rights of distribution companies in a foreign country. It is, however, the statutory duty of this Commission to consider, *inter alia*, in determining public convenience and necessity and public interest, whether the rights given to a distribution company are mutually exclusive,

337

whether the proposed distribution company will ever operate, whether the operations proposed could and would be economically and financially feasible, whether the granting of the authorizations requested would be detrimental to and destructive of otherwise probable benefits to the ultimate consumers, and, whether, in the circumstances, the Commission should authorize the expenditure of funds for the construction of facilities which might never be used, or which may be operated for such a relatively short period of time and at such enormous cost and loss to the applicants that it would be contrary to the public convenience and necessity and inconsistent with the public interest to authorize construction and operation thereof. Cf. *Wrather-Alvarez Broadcasting, Inc. v. FCC*, 248 F.2d 646, 651 (D.C. Cir. 1957).

9. Failing to make basic and fundamental subsidiary findings of fact required by Sections 3, 7(b), 7(c) and 7(e) of the Natural Gas Act and Section 8 of the Administrative Procedure Act.

The Commission, in its Orders in Docket Nos. G-513, CP66-104 and CP66-105, did not make a single subsidiary finding of fact upon which ultimate conclusions of public convenience and necessity could be based. The Orders do not contain a single finding, nor even a word

338

of discussion, dealing with or concerning a single factor required by the Act and judicial and Commission precedent to be taken into consideration and weighed by the Commission in determination of the statutory standards of public convenience and necessity and public interest. See *California v. FPC*, 345 F.2d 917 (9th Cir. 1965).

10. Making ultimate findings and conclusions of fact and law wholly unsupported by subsidiary findings and

(338)

conclusions of fact, and wholly unsupported by any evidence in the record, thus rendering the orders, on the face thereof, null, void, of no effect and unlawful.

11. Arbitrarily, capriciously and unlawfully issuing, in Docket No. CP66-106, a Presidential Permit to Del Norte Natural Gas Co. authorizing maintenance, connection, and operation of facilities at the international boundary for the exportation of natural gas to Mexico, contrary to and inconsistent with the requirements, purpose and intent of Executive Order No. 10485 and Part 153 (Sections 153.1-153.12) of the Commission Regulations Under the Natural Gas Act.

12. Arbitrarily, capriciously and unlawfully failing and refusing to exercise and to perform the regulatory duties imposed upon the Commission by Sections 3,

339

7(b), 7(c) and 7(e) of the Natural Gas Act, Executive Order No. 10485, Section 153.10 and 157.13 of the Commission Regulations Under the Natural Gas Act and Section 1.5(a) of the Commission Rules of Practice and Procedure.

13. Arbitrarily, capriciously and unlawfully accepting for filing and processing the Applications in the within docketed proceedings and issuing the subject Orders in violation of Sections 3, 7(b), 7(c) and 7(e) of the Natural Gas Act, Executive Order No. 10485, Sections 153.10 and 157.13 of the Commission Regulations Under the Natural Gas Act, and Section 1.5(a) of the Commission Rules of Practice and Procedure.

(a)

The statutory standards of public convenience and necessity and public interest impose upon this Commission duties to inquire into and make findings with respect to innumer-

(341)

able and oft-enumerated factors. Commencing with *In Re Kansas Pipe Line Co.*, 2 FPC 29, the criteria by which public convenience and necessity is to be determined requires compelling evidence to establish, *inter alia*, adequacy of markets, adequacy of gas supply, that the rates proposed to be charged by an Applicant do not discriminate between customers of the same class, and adequacy of economic and financial feasibility. Proof

340

of adequacy of markets and of economic and financial feasibility must include proof that the proposed markets do exist, that the rates at which natural gas is proposed to be sold to the ultimate consumer will permit development of such market, that the proposed distribution facilities are or will be capable of delivering natural gas to the ultimate consumers in adequate quantities to permit delivery of the maximum day and annual volumes proposed, and that the rate proposed to be charged will be charged, that the rate at which the natural gas will be sold will provide sufficient revenue to permit profitable operations by each person involved, and particularly the proposed distributor of such natural gas, including a reasonable return on capital investment and amortization of the cost of the properties during a reasonably predictable useful service life of such facilities. The statutory standard of Section 3 requires proof of similar facts and consideration of similar factors, *i.e.*, "the same fundamental considerations." *Northwestern Natural Gas Co.*, 13 FPC 1249, 1250-1 (1954).

The Commission, in the instant proceedings, not only failed to perform its duties in this regard,

341

but it also refused to permit development of a formal record upon which the Commission would have been re-

(341)

quired to find and conclude that public convenience and necessity did not require granting of the Applications and that authorization of exportation of natural gas to Gas Natural, in the circumstances, was not only inconsistent with but, in fact and law, contrary to the public interest.

(b)

Section 3 of the Natural Gas Act and Executive Order No. 10485, necessarily require as a factor affecting public interest consideration, of and respect for the views and concern of the foreign country to which natural gas is proposed to be exported and for the good and harmonious relations and cooperation between the neighboring nations of the United States and the Republic of Mexico. There is not one word in the Orders authorizing exportation of natural gas concerning the position of the Republic of Mexico; nor is there any reference to maintenance or encouragement of good relations between these neighboring countries.

The request of the Ambassador of Mexico to the United States to the Secretary of State, on or about December 8, 1965, that the latter be good enough to use his good offices with the Federal Power Commission so that the request of Juarez Gas for participation in the

342

hearing be granted, which request was appropriately honored by the Secretary of State on or about December 15, 1965, by transmittal of such request to the Federal Power Commission, is not even mentioned.

(c)

The specific provisions of Executive Order No. 10485, Section 1, require filing of an Application for authorization for "construction" of facilities to export natural gas. Ar-

ticle 2 of the Permit issued December 28, 1965, in Docket No. CP66-106 describes fully all of such facilities here involved. Nevertheless, there has not been any application filed with the Commission requesting authority for and no Order has issued authorizing the "construction" of such facilities. The entire proceedings before the Commission are, therefore, null, void and of no effect whatsoever because of the absence of a necessary, dependent and interdependent Application by Southern Union for authorization to construct and install the facilities described by the Commission in Article 2 of the Order of December 28, 1965, in Docket No. CP66-106, the Presidential Permit to Del Norte, only grants authorization "to operate, maintain, and connect the natural gas Transmission facilities described in Article 2 below ..." (mimeo, p. 2).

343

(d)

Section 153.10 of the Commission Regulations Under the Natural Gas Act, a legislative rule relating to Applications for a Permit under the pursuant to Executive Order No. 10485, requires that:

"Any person, firm, or corporation contemplating the construction of, or who is operating or maintaining facilities at the borders of the United States, for the exportation or the importation of natural gas to or from a foreign country, shall file with the Commission an application for a Presidential Permit, in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1953 Supp., p. 106).

In connection with application hereunder, attention is directed to the provisions of §§153.1 and 153.5, inclusive, relative to applications for authorization to export or import natural gas to or from a foreign country under section 3 of the Natural Gas Act."

(343)

Section 153.1, relating to Applications under Section 3 of the Natural Gas Act provides:

"(a) Any person proposing to export natural gas from the United States to a foreign country or to import natural gas from a foreign country, pursuant to the provisions of section 3 of the Natural Gas Act, shall make an application for authorization therefor under this part.

(b) In connection with applications under this section, attention is directed to the provisions of §§153.10 to 153.12, inclusive, relative to applications for Presidential Permits for the construction, operation, maintenance, or connection, at the borders of the United

344

States, of facilities for the exportation and importation of natural gas to or from a foreign country in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1953 Supp., p. 106)."

Section 157.13(c) of the Regulations Under the Natural Gas Act applicable to Applications for a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act provides:

"(c) Interdependent applications. When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently."

Section 1.5(a) of the Commission Rules of Practice and Procedure provides:

"(a) General. Applications for authorization or permission which the Commission may give under statu-

tory or other delegated authority administered by it, in addition to the requirements prescribed in this part, shall conform to the requirements of the rules and regulations promulgated by the Commission separately under the several statutes and delegations of authority administered by it."

The Commission has, thus, in its applicable and extant Rules and Regulations (1) recognized the requirement in law for, and its duty to require, an application to

345

be filed under Executive Order No. 10485, by any person or company "contemplating the construction" of facilities to export natural gas, (2) held that all interdependent Applications must be filed before acceptance, processing and action upon any one of such Applications, (3) held that Applications under Section 3 of the Act and pursuant to Executive Order No. 10485 are interrelated and interdependent, and (4) ordered that compliance must be had with extant substantive and procedural rules.

The Application of El Paso in Docket No. CP66-105 is, necessarily, an interrelated and interdependent application. The Commission Regulations proscribe "acceptance" for filing "until the supporting application has been filed" and prescribe that interdependent applications "shall be filed concurrently."

The requirement for an Application by Southern Union for "construction" of the foreign commerce "facilities" is a substantive legal requirement; it is imposed not only by Commission Rules and Regulations but also by law. Thus, such filing cannot be waived; Rule 153.10 is a legislative Rule, restating requirements imposed by law and must be adhered to. Proceedings involving the "facilities" contemplated to be constructed are a

nullity if, as here, the necessary application "to construct" is not filed.

Inasmuch as a necessary filing has not been made, each and every part of, or action by the Commission in, the entire proceedings herein—from acceptance of filing of the several applications to issuance of the December 28 and 29, 1965 Orders—is a nullity.

The Orders of December 28 and 29, 1965, are, on the face thereof, null, void and of no effect whatsoever.

14. Arbitrarily, capriciously and unlawfully issuing Certificates of Public Convenience and Necessity in Docket No. CP66-105, and authorizing and granting permission and approval for abandonment of service, all as fully set forth in Ordering paragraphs (A), (B), (C), and (D) (mimeo, p. 4), wholly in violation of the Natural Gas Act, Administrative Procedures Act and due process of law.

16. Arbitrarily, capriciously and unlawfully issuing an Order in Docket Nos. G-513 and CP66-104 authorizing exportation of natural gas by Del Norte Natural Gas Company to the Republic of Mexico and terminating in said Order and in the Permit issued December 28, 1965, in Docket No. CP66-106, export authorization

previously issued in Docket No. G-513, authorizing Southern Union unilaterally and despite objection by Juarez Gas to assign its contract with Juarez Gas to Del Norte, and denying the Petition of Juarez Gas Company, S. A. to Intervene in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106, all as more specifically set forth in Ordering Paragraphs (A), (B), (C), (D), and (E) in Docket No. CP66-104, *et al.*, (mimeo, pp. 4-5), and in Article 12 in

Docket No. CP66-106 (mimeo, p. 7), wholly in violation of the Natural Gas Act, Administrative Procedure Act, Executive Order No. 10485, Sections 153.1, 153.10 and 157.13(c) of the Rules and Regulations Under the Natural Gas Act.

V.

Without in any manner waiving any right of Juarez Gas under Section 19(a) and 19(b) of the Natural Gas Act to assure that the aforesaid Orders of December 28 and 29, 1965, be set aside and declared unlawful, null, void and of no effect whatsoever because of the innumerable errors of law about set forth, and without in any manner conceding that there has been a "hearing" in fact and law, Juarez Gas, in conformity and compliance with Section 1.34(b) of the Rules of Practice and Procedure and in further assertion and demonstration of

348

the grievous error of the Commission herein, respectfully represents that:

1. Juarez Gas has been advised and assured by responsible persons that on or about December 8, 1965, the Honorable Hugo B. Margain, Ambassador to the United States from the Republic of Mexico, presented his compliments to the Secretary of State and requested him to use his good offices so that the request of Juarez Gas for participation in the instant proceedings be granted, and that said request was duly transmitted to the Federal Power Commission on or about December 15, 1965. Counsel for Juarez Gas has not been able to find in the official files of this Commission the letter of transmittal by the Secretary of State or the letter or translation thereof from the Ambassador to the Secretary of State.

(348)

There is, however, in the available official file of the Commission in these proceedings, a letter dated November 26, 1965, from the Department of State to Acting Chairman Black stating that *if* the Commission is able to comply with certain suggestions of the United States Commissioner on the International Boundary and Water Commission, "the Department perceives no foreign policy reason to withhold issuance of the permit." This November 26, 1965 letter, transmitted about 13 days

349

prior to the date of the letter from Ambassador Margain to the Secretary of State, and about 20 days prior to transmittal of said letter and translation thereof to the Commission, is held (Order issued December 28, 1965, mimeo, p. 2) by the Commission to support the affirmative finding and conclusion that "the Secretary of State . . . favorably recommend[s] that the permit be granted . . .".

No reference has been made by the Commission, in any of the several Orders issued, to the formal request by the Ambassador representing the Republic of Mexico to the Secretary of State, and transmittal by the latter to the Commission, that the Petition of Juarez Gas,—to be permitted to be a party to the consolidated proceeding and to participate in a formal hearing in opposition to the several Applications,—be granted.

Inasmuch as said request of the Ambassador vitally affects and, necessarily, has a direct bearing upon foreign and diplomatic relations between the United States and the Republic of Mexico, failure of the Commission to even note such fact, much less to act in accord with the wishes and desires of the Republic of Mexico, as made known by the Ambassador, demonstrates Commission arbitrariness, capriciousness, gross abuse

350

of discretion and disregard for appropriate and proper international relations and foreign policy matters, requiring correction and rectification by granting this Application for Rehearing, intervention of Juarez Gas, and holding of a proper and lawful hearing.

2. On December 3, 1965, the Sanitary Engineering Department of the Federal Health Agency in Mexico directed suspension of all further pipeline construction by Gas Natural in the City of Juarez, Mexico, because of violations of law which may endanger life and health of the public. Among possible dangers the following have been reported:—pipelines have not been laid sufficiently deep and possible disjoining of pipes may result; pipe used has been of such small diameter that, as requirements increase, adequate supplies of natural gas cannot be made available to ultimate consumers receiving and requesting natural gas service; and, pipeline connections have been made improperly.

Attached hereto, with translation thereof, are copies of items appearing in public newspapers in the City of Juarez advising the public of the foregoing:

- a) El Fronterizo, December 3, 1965 (Appendix C)
- b) El Fronterizo, December 4, 1965 (Appendix D)

3. By letter dated December 18, 1965, from the Chief of the Sanitary Engineering Department to the

351

Director of the Department, request was made for a complete stop order against Gas Natural because of failure to comply with the laws, and possible detriment to the health of the public. Attached hereto, with translation thereof, is a copy of the aforesaid letter (Appendix E).

(351)

The violations of law referred to in this Paragraph and Paragraph 2 hereof, *inter alia*, (1) evidence the improbability that Gas Natural will ever secure authorization to use such facilities as have been constructed under preliminary permits only; (2) disprove the sworn averments of Del Norte Natural Gas Company that Gas Natural "has procured" all consents and authority "necessary to permit it to serve" natural gas in Juarez and environs; and (3) substantiate the averment of Juarez Gas, in its Petition to Intervene, that it is "highly improbable" that all consents will be procured to enable natural gas service by Gas Natural.

4. The higher rates which Gas Natural proposed to charge, if it does not abandon its project, are questioned by the Mexican authorities. It is apparent that Gas Natural will not be permitted to charge the high rates which had been assumed in the revenue and expense presentation which El Paso attached as an exhibit to

352

its Application in Docket No. CP66-105, which exhibit the Commission presumably deemed evidence in these proceedings (see Order in Docket No. CP66-105, mimeo, p. 2).

Attached hereto, with translation thereof, are copies of items appearing in a public daily newspaper in the City of Juarez advising the public that the proposed rates of Gas Natural are being challenged, that the rates of Gas Natural must be the same as those of Juarez Gas, and reporting the possibility that Gas Natural may abandon its project:

El Fronterizo, December 4, 1965 (Appendix F)

El Fronterizo, January 11, 1966 (Appendix G)

The probability that Gas Natural will not be permitted to charge the rates upon which representations to this

Commission by El Paso have been based and that it may abandon its project (a) is indicative of the absence of financial and economic feasibility of the Gas Natural project, which issues of fact Juarez Gas raised in its Petition to Intervene, thus requiring denial of each independent Application herein; (b) reflects fundamental error by reason of failure of this Commission to consider factors basic and fundamental to a finding of public convenience and necessity and to public interest, (c) reflects the consequences of unlawful

353

Commission action in denying the Petition of Juarez Gas to Intervene and refusing to issue proper and due notice and hold a proper hearing to receive material and relevant evidence upon basic and fundamental issues of fact; and (d) illustrates the consequences of failure of this Commission to perform duties imposed upon it by Congress in the Natural Gas Act and by Executive Order No. 10485.

5. Southern Union Gas Company, on or about December 20, 1965, notwithstanding the provisions of Section 3 of the Natural Gas Act and Executive Order No. 10485, did construct, maintain and connect facilities to, at and on the International Border of the United States and Republic of Mexico with a pipeline of Gas Natural.

Attached hereto is a statement under oath of Jesus Anatole Silva and Oscar Gutierrez Tolentino with photographs attached to and made a part thereof attesting to an on-the-spot viewing and inspection of such construction, maintenance and connection (Appendix H).

Such conduct by Southern Union, in constructing, maintaining and connecting, without having made application, as required by Executive Order No. 10485 and Section 153.10 of the Regulations Under the Natural Gas Act, for permission "to construct" such international

354

facilities, the facilities which are the subject of Docket No. CP66-106 and fully described in Article 2 of the Permit issued December 28, 1965 (mimeo, pp. 2-3), during pendency of the instant proceedings, is indicative of character and ability of an applicant to perform consistent with requirements of public convenience and necessity and in the public interest, and disregard for law and regulation and the rights of others and the public generally. Character and ability of an applicant to perform is always a factor required to be considered in determining public convenience and necessity and public interests; this Commission has denied Juarez Gas the opportunity to which it is lawfully entitled to present of record this and other relevant evidence affecting character and ability of applicants herein to perform by reason of the unlawful and erroneous denial of the Petition of Juarez Gas to Intervene, by the unlawful holding of the non-public hearing, and by denial of procedural and substantive due process to Juarez Gas, which error may be rectified by granting the instant Application for Rehearing and relief herein requested.

6. The Commission Orders of December 28 and 29, 1965, do not authorize construction of facilities proposed

355

to be constructed and installed by Southern Union, although Article 2 of the Permit issued December 28, 1965 (mimeo, pp. 2-3) sets forth in detail the exact nature, kind and extent of such facilities. Executive Order 10485 specifically requires that an Application be filed with the Federal Power Commission for a permit "for construction, operation, maintenance or connection." Section 153.10 of the Regulations Under the Natural Gas Act requires an Application be filed by any person "contemplating the construction of" facilities for the exportation of natural gas.

Such Application has not been filed, although it is agreed by all and specifically held by the Commission that Southern Union *will* construct and install the facilities described in Article 2 as "covered by and subject to this Permit . . ." (mimeo, p. 2).

Juarez Gas, by Commission denial of its Petition to Intervene and unlawfully holding a non-public hearing in violation of its Notice, has been denied the basic and fundamental right to raise and to assert this basic defect in and to the subject proceeding involving interrelated and necessarily interdependent Applications. In view of the necessity for the Commission granting this Application for Rehearing and directing that an

356

appropriate, proper and lawful hearing be held, it would be premature to speculate regarding the purpose of and reason for failure of Southern Union to file, and for the arbitrary, capricious and unlawful Commission action in not requiring compliance with the law and its own regulations, which have the force and effect of law, as a condition precedent to acceptance of the subject Applications, and in issuing Orders which, on the face thereof, establish non-compliance and non-conformity with applicable law.

WHEREFORE, by reason of the foregoing, Juarez Gas Company, S. A., files this Application for Rehearing and requests the Federal Power Commission to enter an order (1) granting this Application for Rehearing, (2) holding the Orders issued in the within dockets on December 28 and 29, 1965 to be null, void and of no effect whatsoever and setting the same aside in their entirety, (3) granting the Petition of Juarez Gas Company, S. A. to Intervene in each of the within proceedings, and (4) setting the interdependent applications

(357)

357

for formal hearing with due notice thereof to all parties.

Respectfully submitted,

JUAREZ GAS COMPANY, S. A.

/s/ JESUS ANATOLE SILVA

By

Jesus Anatole Silva

Av. 16 de Septiembre 219 Pte.

Cd. Juarez, Chih., Mexico

/s/ WILLIAM J. GROVE

By

William J. Grove

1155 Fifteenth Street, N.W.

Washington, D. C. 20005

Of Counsel:

Grove, Paglin, Jaskiewicz,

Gilliam and Putbrese

1155 Fifteenth Street, N.W.

Washington, D. C. 20005

Dated: January 14, 1966

• • • • •

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Commissioners

Claude L. Draper, Acting Chairman, Basil Manly, John W. Scott and Clyde L. Seavey. Leland Olds not participating.

April 25, 1941

Docket No. G-107

In the Matter of

JUAREZ GAS COMPANY, S. A.

**Order Authorizing the Exportation of Natural Gas From the
United States To a Foreign Country**

Upon application filed October 23, 1939, by the Juarez Gas Company, S. A., a corporation constituted in Ciudad, Juarez, State of Chihuahua, Republic of Mexico, and having its principal office in said Ciudad Juarez, State of Chihuahua, Republic of Mexico, for an order of the Commission authorizing the exportation of natural gas from the State of Texas to the Republic of Mexico, pursuant to Section 3 of the Natural Gas Act; and

It appearing to the Commission that:

On July 31, 1940, the Juarez Gas Company, S. A., accepted the terms and conditions of a Presidential Permit for the operation, maintenance, and connection at the border of the United States of facilities for the exportation of natural gas to the Republic of Mexico, signed by the President of the United States on July 9, 1940, and to be released by this Commission, as approved and accepted, simultaneously with the delivery of this order;

(360)

The Commission having considered the application and record herein, *finds* that:

(1) The gas now being exported is not needed to supply consumers in the State of Texas;

(2) The exportation of such gas does not impair the ability of any person to render adequate service to consumers in the State of Texas;

(3) The exportation of natural gas by the applicant herein will not be inconsistent with the public interest;

The Commission *orders* that:

(A) The applicant, Juarez Gas Company, S. A., be and it is authorized to export natural gas from the United States to the Republic of Mexico, in accordance with the terms and conditions as set forth in the application herein; subject, however, to the authority reserved in the Commission:

361

(1) To require from the applicant such reports with respect to the exportation of natural gas as the Commission may deem necessary from time to time;

(2) To modify, from time to time, or to terminate, this authorization after opportunity for hearing;

(B) Transfer, or assignment of this authorization, by operation of law or otherwise, shall not be valid, and the authorization shall thereupon automatically terminate, unless this Commission shall approve such transfer or assignment prior to the effective date thereof;

(C) This authorization shall not deprive any State, State regulatory commission, or the Republic of Mexico of the exercise of the lawful authority vested in such State, State regulatory commission, or the Republic of Mexico over the applicant;

(362)

(D) This authorization shall not be construed as an acquiescence by the Commission in any valuation of property, rate schedules, or in any operating statements claimed or asserted herein by the applicant;

(E) This authorization shall terminate automatically upon the termination or expiration of the contract for the exportation of natural gas, applicant's Exhibit 1 of its application; subject, however, to renewal of the authorization upon a finding by the Commission that such renewal is not inconsistent with the public interest.

By the Commission.

Leon M. Fuquay,
Secretary

362

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Leland Olds, Chairman, Claude L. Draper, John W. Scott,
and Clyde L. Seavey. Basil Manly not participating.
Commissioners

May 12, 1942

In the Matter of

Docket No. G-107

TEXAS CITIES GAS COMPANY

AND

JUAREZ GAS COMPANY, S. A.

**Order Modifying the Terms and Conditions
Under Which Natural Gas May Be Exported**

It appearing to the Commission that:

(a) By orders of April 25, 1941, the Commission authorized the Texas Cities Gas Company and the Juarez Gas

(362)

Company, S. A., to export natural gas from the United States to the Republic of Mexico, "in accordance with the terms and conditions as set forth in the application" for such authorizations;

(b) As parts of such applications, there was submitted an agreement, dated May 7, 1935, which provides for the sale of natural gas by the Texas Cities Gas Company to the Juarez Gas Company, S. A., for resale in the City of Juarez, Mexico, and such agreement was one of the terms and conditions upon which the authorizations of April 25, 1941, were granted;

(c) On June 30, 1941, Texas Cities Gas Company filed with the Commission a supplemental agreement, dated July 1, 1940, to said agreement of May 7, 1935, which supplemental agreement provides: (1) that the agreement of May 7, 1935, shall be renewed for a period of four years from May 7, 1940; (2) a method of computing the amount to be paid to Texas Cities Gas Company for gas resold for industrial use; and (3) a revised definition of "industrial processes" or customer;

(d) On June 30, 1941, Texas Cities Gas Company filed with the Commission supplemental agreements, dated July 23, 1940, and September 10, 1940, respectively, which supplemental agreements provide: (1) that the rate for domestic, lost, and unaccounted-for gas shall be reduced from 42 to 40 cents (American money) per thousand cubic feet, and (2) that the rate for domestic, lost, and unaccounted-for gas shall be further reduced to 37 cents per thousand cubic feet "during

363

such time when the value of the Mexican peso is less than 26 cents in terms of the American dollar as such exchange values are quoted by the Bank of Mexico";

(364)

(e) Texas Cities Gas Company has requested that said supplemental agreements of July 1, 1940, July 23, 1940, and September 10, 1940, be allowed to be made effective as of July 1, 1940;

(f) Good cause has been shown for allowing said supplemental agreements to be made effective as of July 1, 1940;

The Commission *orders* that:

(A) The supplemental agreements of July 1, 1940, July 23, 1940, and September 10, 1940, as filed with the Commission on June 30, 1941, by the Texas Cities Gas Company, to the agreement of May 7, 1935, between that company and the Juarez Gas Company, S. A., be and they are hereby allowed to take effect as of July 1, 1940;

(B) The orders of April 25, 1941, authorizing said Texas Cities Gas Company and Juarez Gas Company, S. A., to export natural gas from the United States to the Republic of Mexico be and they are hereby modified in accordance with the provisions of paragraph (A) above.

By the Commission.

J. H. Gutride,
Acting Secretary.

364

EL FRONTERIZO. No. 7856.—Ciudad Juarez, Chih., Friday December 3, 1965.—

THE WORKS OF NATURAL GAS ARE SUSPENDED

The Sanitary Engineering Department of the Federal Health Agency has suspended the works of introduction of pipelines of the Company Natural Gas de Juarez, as they did not exhibited their maps for their approval.

The said federal agency, shall also request to the General Engineering Direction the presence of one of their representatives to supervise the works of the said company.

(364)

The technic of the General Direction of Sanitary Engineering is required to determine if this public service does not constitute an imminent danger to the community; because if they are not using adequate pipelines and at a convenient depth, there exists the menace of an explosion in the lines.

When giving the above information, Architect Ramon Flores Herrera, Chief of the Sanitary Engineering said that once the works be suspended due to the failure to comply with the requisites of presenting the maps, they will not be re-started until they are duly supervised.

The deponent stated that before Gas Natural de Juarez had started to introduce the pipelines, they asked for the

365

maps signed by the responsible technician in gas, and as they did not obeyed this request, the authorities proceeded as above set forth.—

* * * * *

367

EL FRONTERIZO.—No. 7857.—Ciudad Juarez. Chih., Saturday December 4, 1965.—Page Three Section "A".

NATURAL GAS DE JUAREZ TRIES TO OBTAIN SPECIAL RATES

It is feasible that Gas Natural de Ciudad Juarez will not operate with the rate of 35 cents per cubic meter, nor with the other rates fixed by Industry and Commerce to Juarez Gas Company.

The reason why is due to the fabulous investments made by the company in the modern installations for distribution, according to the requirements of the Department of Industry and Commerce.

The information was given yesterday to EL FRONTERIZO by Mr. Alfonso Caraveo, general manager of Gas Natural; at the same time he denied that the Department of Sanitary Engineering of Federal Health had stopped the works in view of the lack of maps, since all notifications were made directly in Mexico where they were informed that inspectors would be sent, but they never appeared.

The operation with losses of money due to low rates, said Mr. Caraveo, would mean that the company will suspend the operation. The question of the rates is still in the hands of the General Director of Prices of Industry and Commerce where the economic study sent by the company is being checked,

368

basing the information in the high investments made for the general installations of the company.

The company, said the general manager, has all the permits for use and operation issued by the Clerk of the Department of Industry and Commerce; the export from the United States and import of combustibles, which will arrive today, issued by the General Direction of Commerce and Permits.

To give an idea of the prices which will approximately be fixed for the distribution of natural gas, Mr. Caraveo stated that there is a 60 cents rate for Queretaro, 55 cents for Piedras Negras and the Federal District and 60 cents for Chihuahua and Saltillo. Nevertheless the final resolution of the General Direction of Prices of Industry and Commerce is being waited.

Possibly, for the 15th of the current month, date on which the operation is to start, the official rates for distribution may come.

Finally, the general manager confirmed that Industry and Commerce authorized to charge \$605.58 for each in-

(368)

stallation of domiciliary connections in Zone One, which comprehends by now, the Hidalgo and Margaritas Colonies, which a 50,000 potential users, approximately.—

• • • • •

370

Seal with the National Coat of Arms
Department of Health
Executive Federal Power
AID AND HEALTH DEPARTMENT UNITS
Cd. Juarez, Chih.

HEALTH UNIT "A"
HEALTH AND AID DEPARTMENT
SANITARY ENGINEERING DEPARTMENT

6404-782
(721.4)

Cd. Juarez, Chih., December 18, 1965

Hon. Director of
Sanitary Engineering
Mexico, D. F.

I request from you that a resolution be issued in regard to the case of Company "Gas Natural de Juarez, S. A.", which precedents as follows:

1. —By official letter #0885 File 32/519 (721.4) 1 dated on September 18, 1964 (signed by Miguel Montes de Oca) a temporary permit was issued, in the understanding that the project of the works should be presented in this Sanitary Engineering Department. A year has been elapsed and the company is about to finish the work without having complied with the requirement above mentioned.

2. —Exhibited a "rough draft" of a section and a plan of the general distribution system, which was returned

371

as it did not coincide with the works and is not signed by the responsible technician in gas.

3. —All the joints, reductions and domiciliary connections have been welded with electric welding. I consider that the diameter of the pipelines is so small that it offers no security due to the difference in thickness since the welding area is reduced and therefore the welding is thin in the walls of the pipelines.

4. —The material used is "Tuberia Nacional"; these pipelines sometimes offer problems as crystallization that that may cause welding imperfections. The company "Gas Natural de Juarez, S. A." assures that the tests are made with a high voltage detector (10,000 v.) but up to this date no proof has been exhibited in this regard.

5. —Nor the company nor the workers have indicated precisely where the control valves and drop of pressures are located in the general lines; so, when a leak or escape occurs, it will be necessary to close from the regulation station, since there are no controls in the street intersections.

372

6. —The responsible gas engineer has never appeared in this Department to request inspections. The works are made, tested and covered up without the certification of the Sanitary Engineer.

Therefore to you I respectfully pray that the pertinent resolution be issued herein.

Respectfully,

The Director:
The Chief of the Sanitary
Engineering Department
Arq. Ramon Flores Herrera

• • • • •

(375)

375

THE FEDERAL HEALTH DEPARTMENT HAS AUTHORITY TO STOP
THE WORKS OF THE GAS COMPANIES.

(EL FRONTERIZO, No. 7857.—Ciudad, Juarez, Chih.,
Saturday December 4, 1965.—Page Five. Section "B".)

The Sanitary Engineering Department of the Federal Health Agency, has ample authority in accordance with provisions of Articles 138, 139 and 142 of the Sanitary Code, to stop the works of introduction of pipelines of the company Gas Natural de Juarez and even the supply of gas, if they are not made with the maximum of guarantee to safeguard the life of people or public health.

In support of this authority, yesterday, in official letter 6406/772 it was requested to the Department of Study and Project of the Section of Gas of the Department of Health, the presence of one of their representatives to supervise the works above mentioned.

Article 142 of the Sanitary Code is herein transcribed in toto: "Are held as dangerous businesses, installations or activities that, according to the regulations and at the good judgment of the Department of Health affect or may affect the life or health of the workers or public, because of the nature of the works, materials or remainders thereof, or by the storage of toxic substances, corrosive, inflammable or explosives".

376

As the said gas company did not exhibited the maps or plans of the Sections in which they are working on, and has not declared the quality of the materials, Federal Health can suspend the works, including the service, said the chief of Sanitary Engineering.

On the other hand the President of the Plumbing Training School of the Popular Sector, Mr. Javier Ortiz Vall-

(379)

anueva, with a 30 years experience in this field, stated that there are irregularities in the introduction of the said pipelines.

This old plumber stated that the Company Gas Natural de Juarez has been welding the main pipelines and they must be united with screw-thread unions. The same is done with domiciliary connections.

The teacher of the said school has seen that in some parts, the pipelines are introduced less than one meter in depth, so the vehicles, that is with the vibrations thereof, the welding material will disjoin and the pavement will have to be destroyed to correct these failures.

Mr. Ortiz Villanueva before the federal authorities, also stated that the gas company is laying pipelines of small diameter, so when the request of gas raises, supply of gas will not be sufficient.

377

The aforesaid declarations reinforce what the authorities have stated; that it is necessary to supervise the said works which, if not made according to the requisites already said, will be suspended on account of public safety.

• • • • •

379

EL FRONTERIZO.—No. 7895.

Ciudad Juarez, Chih., Tuesday January 11, 1966.—

ALL GAS COMPANIES MUST SUBMIT TO THE DISPOSITIONS OF
INDUSTRY AND COMMERCE.

The company Gas Natural de Juarez or any other—company that may start operations, tending to the distribution of domestic combustible, must be subject to the actually—

(379)

authorized rates, according to the last dispositions issued by the Department of Industry and Commerce.

The instructions in this respect are final, according to the last message sent by General and Attorney Antonio Rojas Garcia, General Director of Prices of the Department of Industry and Commerce (SIC) to the Federal Delegation of this City, not only ordering the application of the said disposition, but confirming what before he had said to Attorney Ernesto-Benjamin Ascensio.

The communication of the General Director of Prices does not indicate specifically any company in particular, it only says "any company" that might be about to start to operate, will be subject to official prices given by the Department of Prices, through Attorney Ernesto Higuera Lopez, by the end of last year.

The prices authorized in that date, were 35, 29, 27 and 25 cents per cubic meter, according to the usage that—natural gas will be given to, that is, domestic, commercial industrial or aiding use. With the aforementioned prices

380

the scale rates applied for the distribution of gas established by the company Juarez Gas Company were eliminated.

• • • • •

393

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP66-104

In the Matter of
DEL NORTE NATURAL GAS COMPANY

**Acceptance of Order Authorizing
Exportation of Natural Gas**

In accordance with Section 157.20(A) of the Regulations under the Natural Gas Act and ordering paragraph (A) of the order issued December 29, 1965 in this proceeding, Del Norte Natural Gas Company hereby accepts the Order Authorizing Exportation of Natural Gas issued to it by said order.

Respectfully submitted,

DEL NORTE NATURAL GAS COMPANY

By

John L. Harlan

JOHN L. HARLAN

President

STATE OF TEXAS
COUNTY OF EL PASO

JOHN L. HARLAN, being first duly sworn, on oath, says that he is President of Del Norte Natural Gas Company and that, as such officer, he has executed the foregoing Acceptance of Order Authorizing Exportation of Natural

(393)

Gas for and on behalf of said Company with full power and authority to do so.

John L. Harlan

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this 14th day of January, 1966.

Jerry J. Butler
Notary Public in and for
El Paso County, Texas

My Commission Expires
June 1, 1966.

394

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

Docket No. CP66-106

In the Matter of

DEL NORTE NATURAL GAS COMPANY

**Acceptance of Permit Issued
Pursuant to Executive Order No. 10485**

Del Norte Natural Gas hereby accepts the Permit authorizing Del Norte to operate, maintain and connect natural gas transmission facilities at the international boundary between the United States and Mexico issued pursuant to Executive Order No. 10485 on December 28, 1965.

Respectfully submitted,

DEL NORTE NATURAL GAS COMPANY

By

John L. Harlan

JOHN L. HARLAN

President

(418-A)

STATE OF TEXAS
COUNTY OF EL PASO

JOHN L. HARLAN, being first duly sworn, on oath, says that he is President of Del Norte Natural Gas Company and that, as such officer, he has executed the foregoing Acceptance of Permit Issued Pursuant to Executive Order No. 10485 for and on behalf of said Company with full power and authority to do so.

John L. Harlan

SUBSCRIBED AND SWORN to before me, the undersigned authority, on this 14th day of January, 1966.

Jerry J. Button
Notary Public in and for
El Paso County, Texas

My Commission Expires
June 1, 1966.

• • • • •

418-A

HEALTH CENTER "A"
UNIT OF HEALTH & ASSISTANCE
SANITARY ENGINEER

de correspondance

6406-721.4

Cd. Juarez, Chih. January 19, 1966.

Dr. Roberto Lozano Elizondo.
Director of the Sanitary Assistance Unit.
In this city.

In relation to the works executed by the company Gas Natural de Juarez, S. A., and according to the tests made

(418-A)

with the materials that were used to install the gas lines, let me inform you of the following:

FIRST: They presented me samples of "Tuberia Nacional S. A." pipe which proved that the pipe made and sold by these gentlemen, is made under specification B-10-1957 of the General Direction of Normas, under the Secretary of Industry and Commerce, which is the Official for fabrication of black and galvanized steel pipe for the conduction of liquids, vapors, and gases. At the same time, I was informed of the process of fabrication that they use which guarantees the quality of the pipe against whichever defect of fabrication specified for installation of natural gas systems.

SECOND: I was also delivered by "PROTEXA S. A.," tests of their welds in which it was proved that there did not exist crystallization in the welds because of the perfection with which it is done, also copies of the analyses made by the laboratory of "Tubacero S. A." which confirmed that the said crystallization cannot exist when complying with the A. P. I. specifications.

THIRD: They presented me two types of domestic service welds in which not only were there different diameters of pipe, the weld was in perfect condition for its use.

For this reason and after verified new more careful inspections and seeing the tests presented, I confirm that the system of "Gas Natural de Juarez S. A." complies with the specifications to be operated; the reason for which is that the Secretary of Industry and Commerce gave the use and functioning permit, and for what corresponds to this Department, subject to changes by the higher authorities.

ATTENTIVELY,

SUFFRAGE EFFECTIVE: NO RE-ELECTION

The Chief of the Sanitary Engineering Department
ARQ RAMON FLORES. H.

419

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: David S. Black, Acting Chairman;
L. J. O'Connor, Jr., Charles R. Ross, and Carl E. Bagge.

Docket No.

G-513

SOUTHERN UNION GAS COMPANY

CP66-104

DEL NORTE NATURAL GAS COMPANY

CP66-105

EL PASO NATURAL GAS COMPANY AND
EL PASO GAS TRANSPORTATION CORPORATION

CP66-106

DEL NORTE NATURAL GAS COMPANY

Order Denying Rehearing and Stay

(Issued February 1, 1966)

On January 14, 1966, Juarez Gas Company, S. A. (Movant), filed a motion for stay and an application for rehearing of the orders of the Commission issued December 29, 1965, in Docket Nos. G-513, CP66-104 and CP66-105 and the permit released concurrently therewith in Docket No. CP66-106. By order issued in Docket Nos. CP66-104 and G-513 the Commission authorized Del Norte Natural Gas Company (Del Norte) to export natural gas from the United States to Mexico in lieu of Southern Union Gas Company (Southern Union) and terminated the authorization theretofore issued to Southern Union in Docket No.

(419)

G-513. Del Norte proposes to continue the sale and delivery of natural gas to Movant for resale and distribution in Ciudad Juarez, Chihuahua, Mexico, and to initiate the sale of natural gas to Gas Natural de Juarez, S. A. (Gas Natural), a new distributor, for resale and distribution in Ciudad Juarez. Del Norte will lease existing and new facilities from Southern Union to export gas. Said order also denied the petition for leave to intervene filed by Movant in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106. By order issued in Docket No. CP66-105 the Commission permitted and approved the abandonment of the sale of natural gas by El Paso Natural Gas Company to Southern Union and authorized the sale of natural gas to Del Norte. Said order also permitted and approved the abandonment of the transportation of natural gas by El Paso Gas Transportation Corporation for Southern Union and authorized the initiation of such service for Del Norte, together with the construction and operation of facilities therefor. In Docket No. CP66-106 the Commission released a permit authorizing Del Norte to operate, maintain and connect facilities at the international boundary to export natural gas and revoking the permit theretofore issued to Southern Union.

420

Docket No. G-513, *et al.*

In its petition for leave to intervene Movant had alleged that it is not consistent with the public interest to authorize the exportation of natural gas pursuant to Section 3 of the Natural Gas Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier and further that Gas Natural probably would not be able to secure the requisite federal, state and municipal authorizations to import and distribute gas. These allegations are reiterated in the application for

rehearing. It was pointed out in the order denying the petition for leave to intervene that it is not within the Commission's province to determine which of two distributors has the legal right to distribute natural gas in a community within a state where the issue has been raised. *American Louisiana Pipe Line Company, et al.*, Docket No. G-2306, *et al.*, 28 F.P.C. 41. With respect to the allegation that Gas Natural probably will not receive the necessary import and distribution authorizations, it should be noted that the order authorizing the exportation of natural gas issued in Docket No. CP66-104 is conditioned upon the receipt of appropriate import authorization and is without prejudice to any action taken by any authority in Mexico.

We said in the order denying Movant's petition and we repeat here that the Federal Power Commission is not the proper forum in which Movant can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. Any such determinations must be made in Mexico by the Mexican authorities having jurisdiction over such matters. If Gas Natural is denied authorization in Mexico to import and/or distribute natural gas, then Del Norte cannot export natural gas for delivery to Gas Natural.

The application for rehearsing does not set forth any new facts or principles of law which indicate that the Commission was in error in denying Movant's petition or in issuing the orders and permit.

The Commission finds:

The assignments of error and grounds for rehearing set forth no new facts or principles of law which either were not fully considered by the Commission when it issued the orders in Docket Nos. G-513, CP66-104 and CP66-105 and the permit in Docket No. CP66-106, or which having

(420)

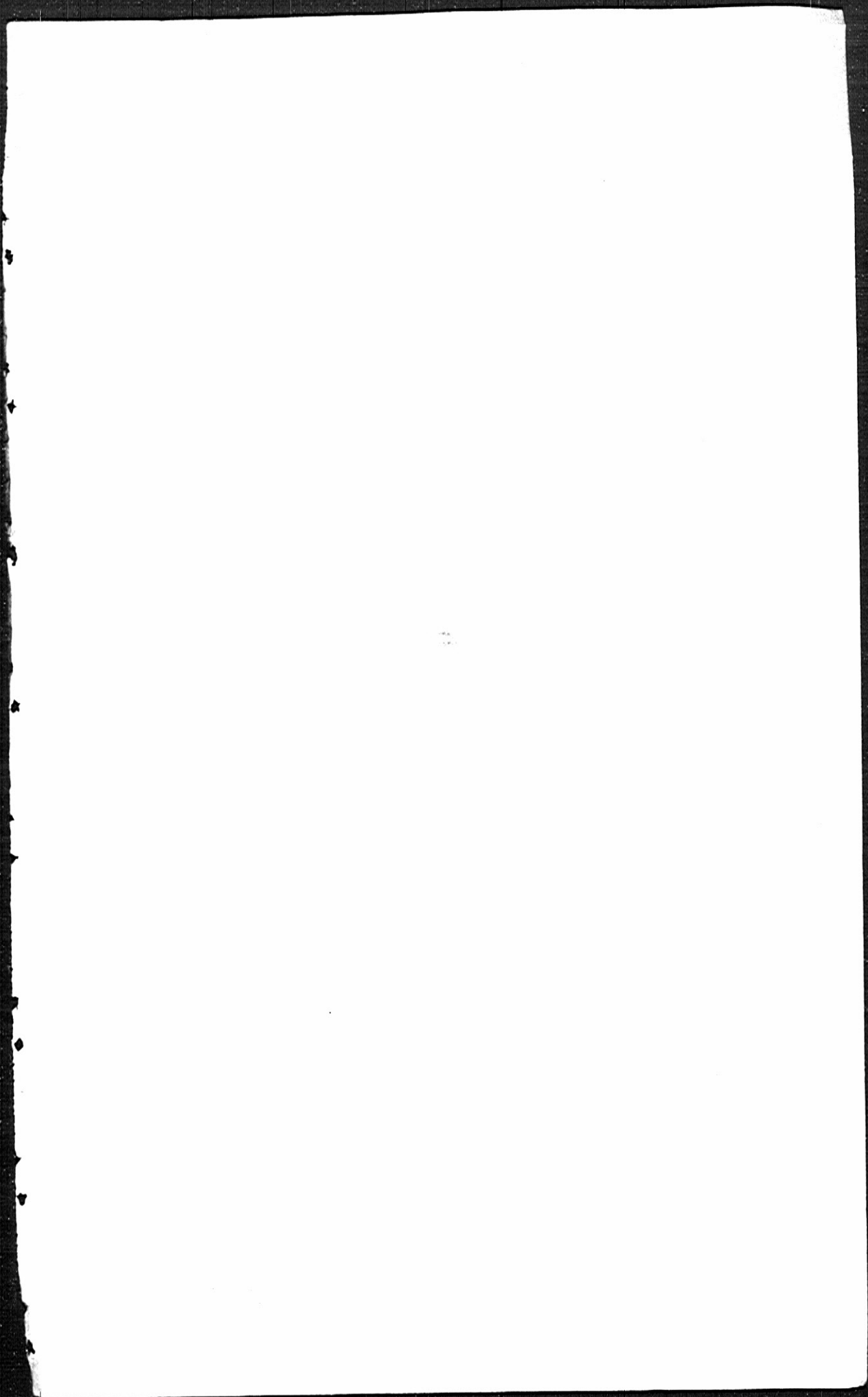
now been considered, warrant any change or stay of said orders and permit.

The Commission orders:

The application for rehearing and the motion for stay filed January 14, 1966, by Juarez Gas Company, S.A., are denied.

By the Commission.
(S E A L)

Gordon M. Grant,
Acting Secretary.



In The
United States Court of Appeals
For the District of Columbia Circuit

Juarez Gas Company, S. A.,)	
Petitioner)	
)	
v.)	No. 19,973
)	
Federal Power Commission,)	
Respondent)	

PETITION OF JUAREZ GAS COMPANY, S. A.
FOR MODIFICATION OF JUDGMENT

Juarez Gas Company, S. A., Petitioner in the above-entitled case, pursuant to Rules 26 and 27 of the Rules of this Court, hereby petitions this Honorable Court for modification of the Judgment issued herein on March 14, 1967, to provide for allowance of costs to Petitioner and assessment of costs against Del Norte Natural Gas Company (Del Norte) and Southern Union Gas Company (Southern Union), Intervenor herein. In support hereof, Petitioner states:

I.

Petitioner, on February 15, 1966, filed its Petition to Review certain Orders of the Federal Power Commission, Respondent. This Court, on February 16, 1967, issued its Decision holding that Respondent erred as a matter of law in

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 27 1967

Nathan J. Paulson
CLERK

denying intervention to Petitioner and that it was necessary that the proceedings be remanded to Respondent for hearing. On March 14, 1967, this Court issued its Judgment setting forth the nature and scope of the proceedings upon remand. The Judgment, however, failed to provide for the final award of costs to which Petitioner is entitled by virtue of having prevailed on the merits of its cause herein.

II.

Petitioner is entitled to allowance of costs and assessment thereof upon Del Norte and Southern Union. Issuance of an appropriate Order by this Court (1) is in accord with the intention of the parties as expressed in the Joint Motion With Respect to Briefs, Joint Appendix, and Related Procedures, filed with this Court by Petitioner, Del Norte, Southern Union and Respondent on May 6, 1966; (2) is required by the well-settled principle of law that a successful litigant is entitled to recover his costs from the party or parties who have resisted or opposed his asserted right (see 20 Am. Jur.2d 23); ^{1/} and (3) is provided for by Rules 38(n), 27(c), 20(f), 20(d) and 17(f) of the Rules of this Court.

^{1/} Before Respondent Federal Power Commission, Del Norte and Southern Union actively opposed granting Petitioner its right to intervene and, similarly, before this Court, actively supported the Orders of Respondent denying such right to intervene.

III.

The Joint Motion expressed a clear intention that there should be a final award of costs upon issuance of the Judgment of this Court. The parties stated (p. 4):

"Without prejudice to any final award of costs, petitioner . . . shall initially pay for the printing of the joint appendix (including all of the incremental cost of all portions, by whomever designated, of the additional 40 copies hereinafter referred to) . . . and reimbursement shall be made to them by other parties (except the Federal Power Commission), respectively, for the pro rata costs of printing. (other than for such 40 copies) the portions such parties designate . . ." (Emphasis supplied)

IV.

This Court, on May 12, 1966, on consideration of the said Joint Motion, entered an Order which provided, inter alia, that

"Arrangements as to printing, quantity to be ordered, apportionment of costs, and number of copies of pleadings to be served by the parties shall be as may be agreed upon by the parties."

V.

Pursuant to Rule 17 of the Rules of this Court, Petitioner filed its typographically printed Brief and Reply Brief on July 5, and September 19, 1966, respectively. In addition, Petitioner, as agreed upon by the parties, arranged

and paid for the printing of the Joint Appendix (including the additional 40 copies referred to in III above), filed 25 copies thereof with this Court, and served a total of 18 copies thereof (six to each party) on October 10, 1966. In accord with the provisions of the Joint Motion, Petitioner has been reimbursed for costs representing that proportion which the additional designation of record to be printed made by Southern Union and Del Norte bore to the total designation. Del Norte and Southern Union have refused to make any additional reimbursement to Petitioner.

VI.

Rule 27(c) of the Rules of this Court provides in pertinent part:

"In the absence of a direction by the Court that a formal mandate issue, it shall suffice for the Clerk to transmit to the proper court^[2]/ . . . a copy of the opinion, if any, and a certified copy of the judgment of this Court,

^{2/} This rule requires the Clerk to transmit to the Federal Power Commission a copy of the opinion and certified copy of the judgment, including provision for recovery of costs; Rule 38(n), relating to review of orders of administrative agencies, provides that "The applicable provisions of Title II of these rules [including Rules 27 and 20] shall govern such cases."

which shall include provision for the recovery of costs if any are awarded. At the same time or as promptly thereafter as possible the Clerk shall prepare and transmit to the proper court an itemized bill of costs as taxed by him in accordance with the terms of the judgment . . ."
(Emphasis supplied)

Rule 20(f) of the Rules of this Court provides:

"When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below."

VII.

Rule 20(d) of the Rules of this Court provides:

"The actual cost of printing briefs and the cost of printing the joint appendix, or such portion of the cost of printing the joint appendix as may have been paid by the party entitled to costs, shall be taxed as costs in the case in accordance with the provisions of subdivision (f) of Rule 17."

Rule 17(f) of the Rules of this Court provides in pertinent part:

"Briefs and the joint appendix . . . shall be printed. Unless otherwise ordered by the court, the actual cost of printing the briefs and the joint appendix, or such portion of the cost of printing the joint appendix as may have been paid by the party entitled to costs, shall be taxed as costs in the case in conformity with the following:

"(1) If printed by typographic methods, in an amount not to exceed \$3.50 per printed page of text including the statement of questions presented; \$5.50 per page of index; \$9.50

per cover; and at rates not exceeding those generally charged in the District of Columbia by commercial printers for inserts, tabular matter, lithographing, and similar matters;"

* * * * *

"In addition, the District of Columbia sales tax on the brief and joint appendix paid by the party entitled to costs shall be taxed as costs. The cost of alterations and revisions shall not be taxed."

VIII.

The total amount paid by Petitioner for printing its Brief, Reply Brief, and the Joint Appendix was \$3,408.47, as set forth in the appended tabulation prepared by Petitioner from the printer's invoices, copies of which also are appended. 3/ Since these stated costs are based upon per page amounts which exceed those permitted by Rule 17(f) to be recovered as costs, Petitioner has prepared, in accordance with Rule 17(f), a schedule of costs which is appended hereto as Appendix B. Thus, Petitioner is entitled to recover from Intervenor, Del Norte and Southern Union, printing costs totalling \$1,561.39. This total takes into consideration amounts already paid to Petitioner by said Intervenor as reimbursement for the cost of printing in the Joint Appendix their respective designations of record, and does not include costs of alterations.

3/ Appendix A hereto, and three attachments.

WHEREFORE, Juarez Gas Company, S. A., Petitioner, petitions this Court to modify the Judgment issued herein on March 14, 1967 by (1) adding to said Judgment an assessment of costs against Intervenors Del Norte Natural Gas Company and Southern Union Gas Company in accordance with Appendix B hereto, plus such other costs as justice may require to be assessed against said Intervenors, (2) directing the Clerk to insert an itemized bill of costs and the amount of such assessed costs in the body of the amended process to be sent to the Federal Power Commission in accordance with the remand ordered by this Court herein, and (3) providing in the Modified Judgment such procedures for the recovery of costs by Petitioner as this Court deems proper.

Respectfully submitted,

JUAREZ GAS COMPANY, S. A.

William J. Grove
Philip R. Ehrenkranz
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Of Counsel:

Grove, Jaskiewicz and
Gilliam
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

/s/ Philip R. Ehrenkranz

By

Philip R. Ehrenkranz
Its Attorneys

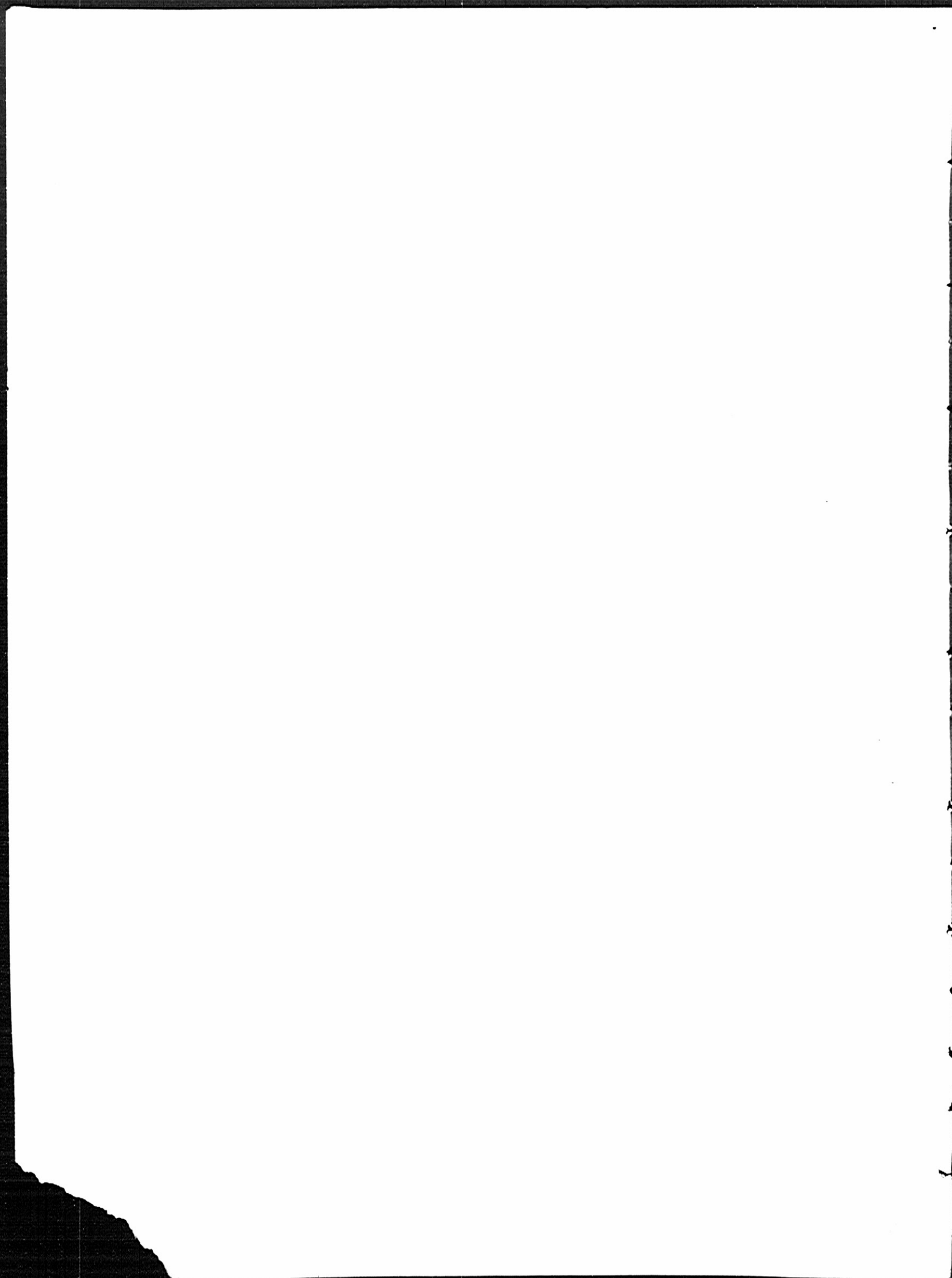
Dated: March 27, 1967

APPENDIX A

COST OF PRINTING BRIEF AND REPLY BRIEF
OF PETITIONER JUAREZ GAS COMPANY, S. A.,
AND JOINT APPENDIX

<u>Document</u>	<u>Cost</u>
Brief of Petitioner (1)	\$ 574.79
Reply Brief of Petitioner (2)	157.33
Joint Appendix (3)	<u>2,676.35</u>
 TOTAL	 <u>\$ 3,408.47</u>

- (1) See Attachment No. 1 hereto
- (2) See Attachment No. 2 hereto
- (3) See Attachment No. 3 hereto



APPENDIX A

Attachment 1

BYRON S. ADAMS PRINTING, Inc.

1213 K Street, N.W. Washington, D. C. 20005

I Never Disappoint

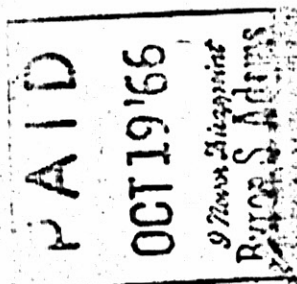
Telephone: 347-8203

- Juarez Gas Co.
c/o William J. Grove, Esq.
600 Madison Building
Washington, D.C.

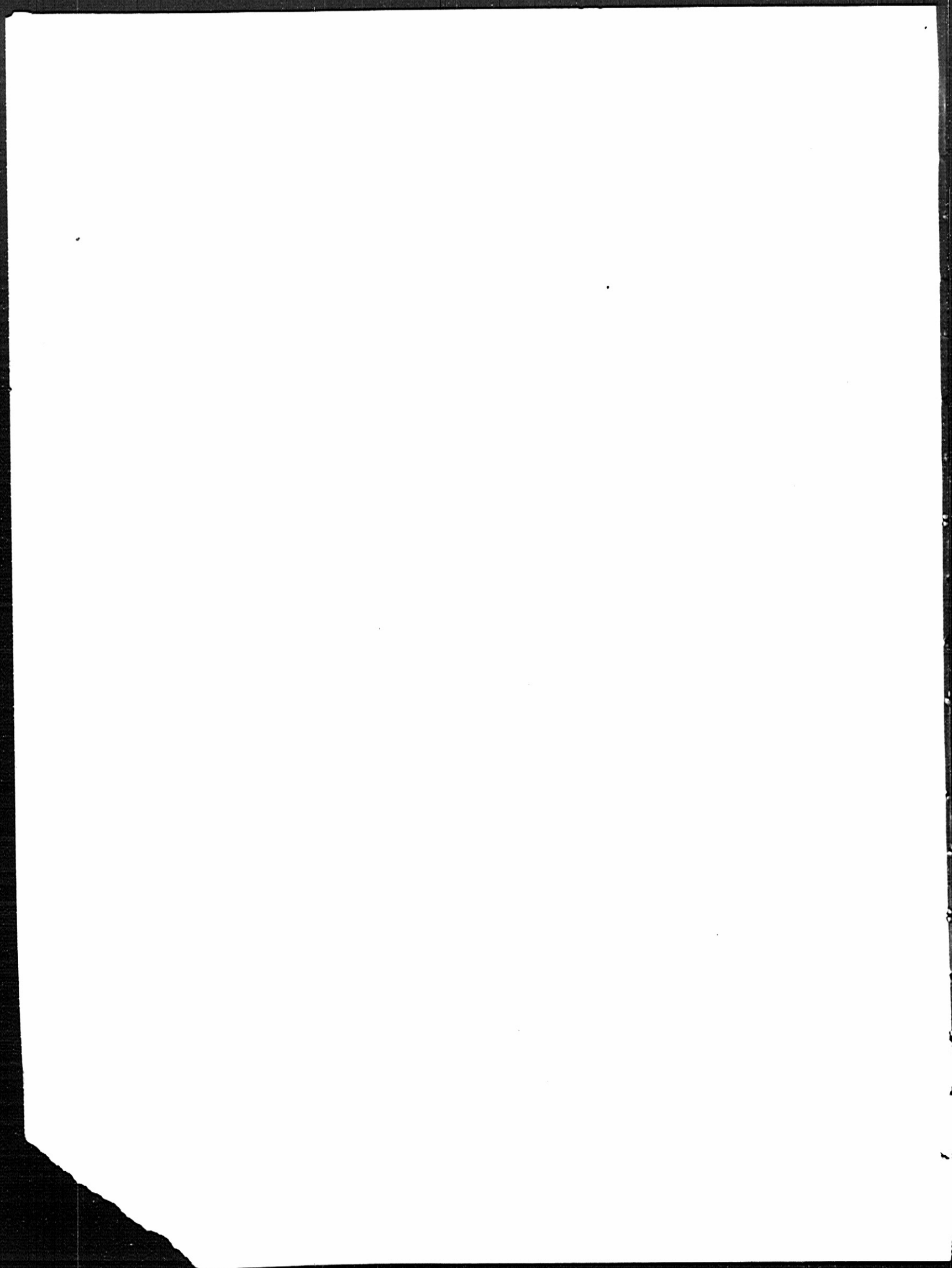
Your
Order No.

TERMS: NET 30 DAYS, NO DISCOUNT ALLOWED

Order Number	1966		
2025	7/6	60 Copies Brief U.S.C.A. - D.C. No. 19,973	
		50 Covers.....	28.00
		10 Add'l Covers.....	1.40
		3 pp. Index @ 11.00.....	33.00
		10 Add'l Index @.40.....	1.20
		63 pp. Text 50 Copies @ 6.70.....	422.10
		10 Add'l Copies Text @.40.....	25.20
		Footnotes.....	14.00
		Alterations.....	33.15
			558 05
		D.C. Sales Tax	16 74
			574. 79



Unless specifically exempt by law, a sales tax of 3% is imposed on all types of printing actually delivered within the District of Columbia regardless of the geographical location of the purchaser.



APPENDIX A

Attachment 2

BYRON S. ADAMS PRINTING, Inc.

1213 K Street, N.W. Washington, D. C. 20005

I Never Disappoint

Telephone: 347-8203

- Juarez Gas Co.
c/o William J. Grove, Esq.
600 Madison Building
Washington, D.C.

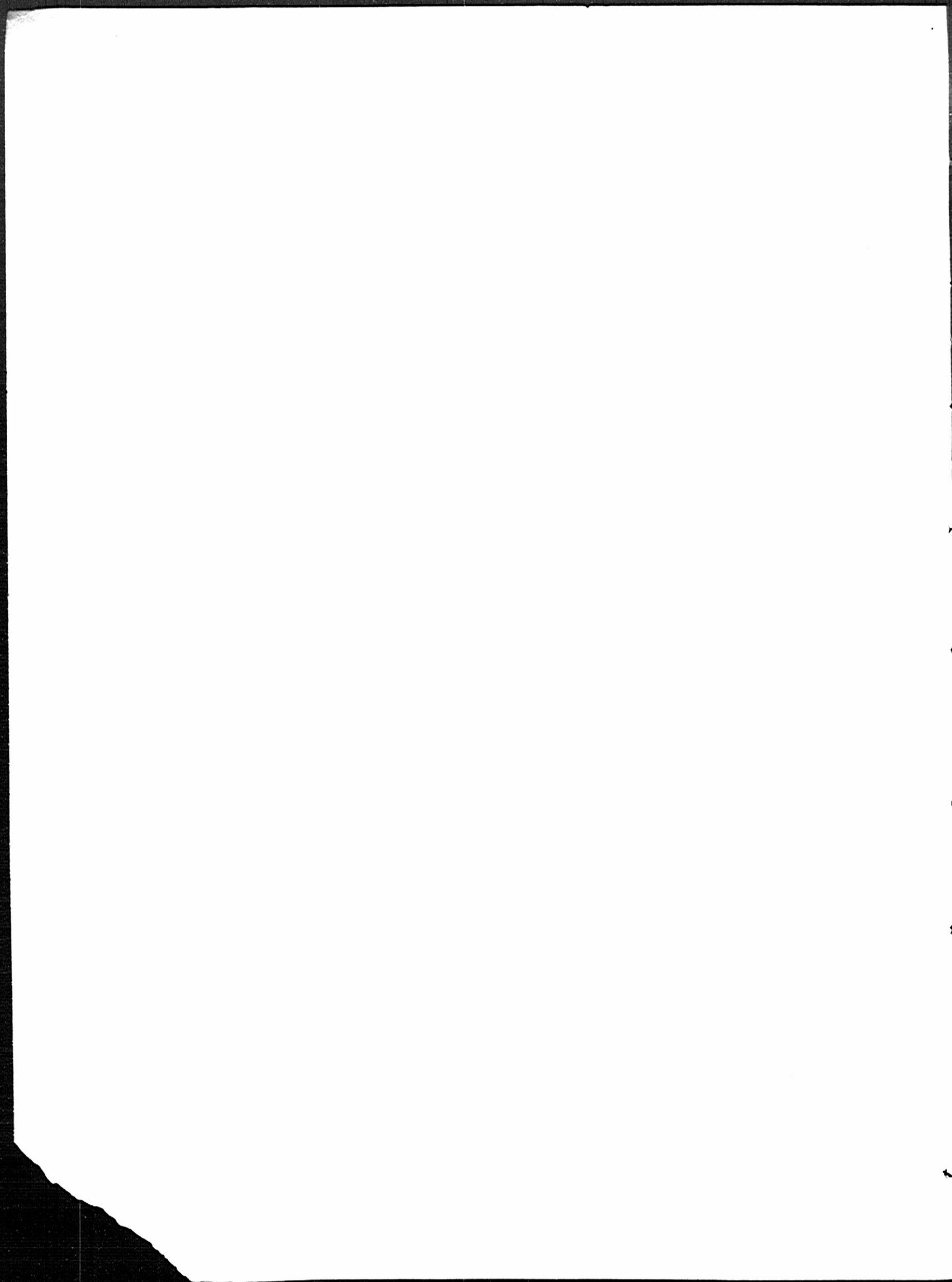
Your
Order No.

TERMS: NET 30 DAYS, NO DISCOUNT ALLOWED

Order Number	1966			
2846	9/16	60 Copies Reply Brief U.S.C.A. - D.C. No. 19,973		
		50 Covers.....	28.00	
		10 Add'l. Covers.....	1.40	
		2 pp. Index @ 11.00.....	22.00	
		10 Add'l Index @.40.....	.80	
		11 pp. Text @ 6.70.....	73.70	
		10 Copies Add'l Text @.40.....	4.40	
		Alterations.....	14.95	
		Footnotes.....	7.50	152 75
		D.C. Sales Tax		<u>4. 58</u>
				157 33

PAID
OCT 10 '65
Byron S. Adams

Unless specifically exempt by law, a sales tax of 3% is imposed on all types of printing actually delivered within the District of Columbia regardless of the geographical location of the purchaser.



BYRON S. ADAMS PRINTING, Inc.

1213 K Street, N.W. Washington, D. C. 20005

I Never Disappoint

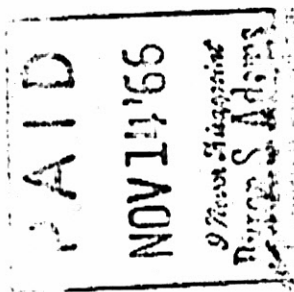
Telephone: 347-8203

- Juarez Gas. Co.
c/o William J. Grove, Esq.
600 Madison Building
Washington, D.C.

Your
Order No.

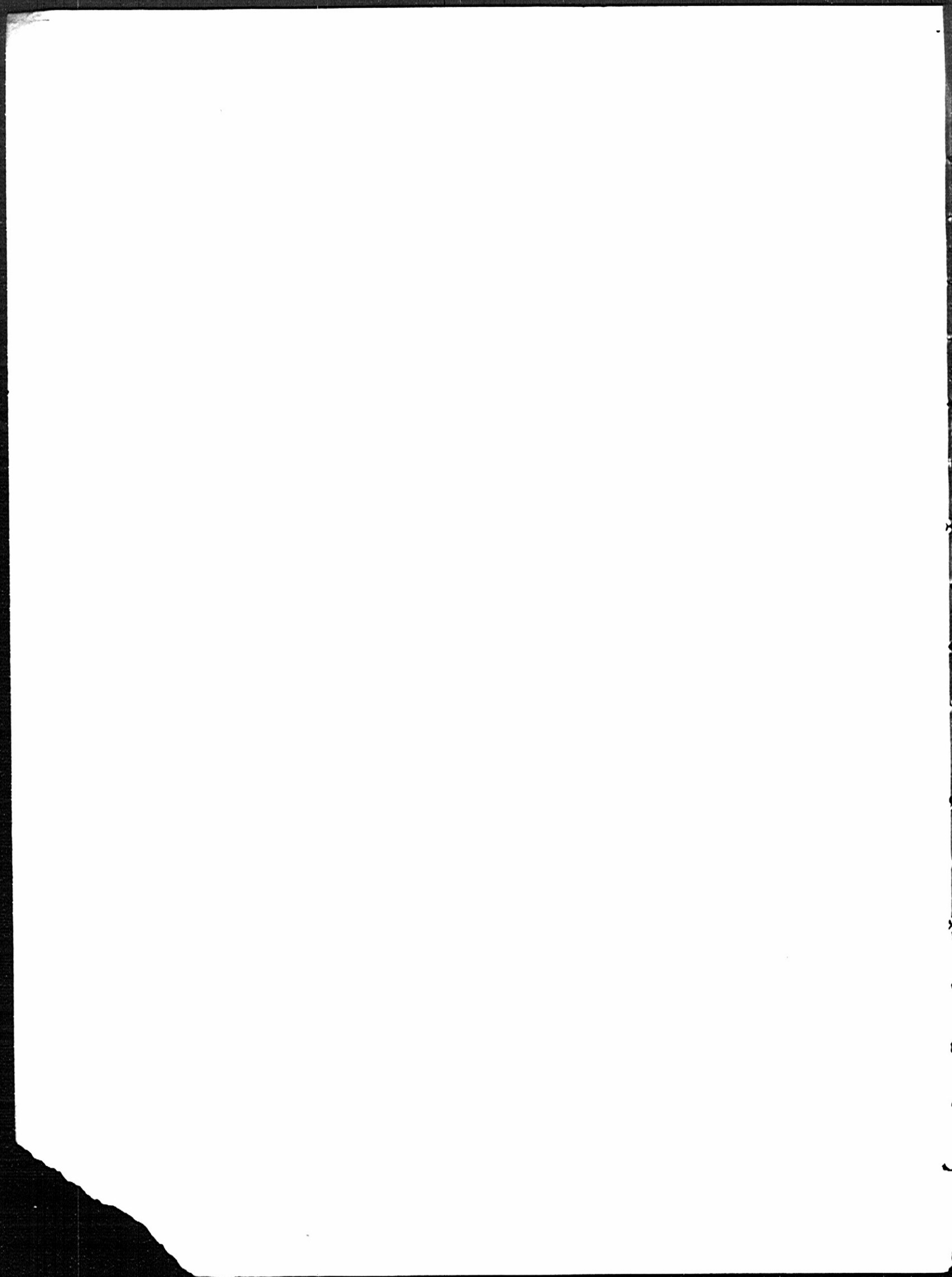
TERMS: NET 30 DAYS, NO DISCOUNT ALLOWED

Order Number 3062	1966 10/13	100 Copies Joint Appendix U.S.C.A. - D.C. No. 19,973	
		50 Covers.....	28.00
		50 Add'l Covers.....	7.00
		6 page Index @ 13.00.....	78.00
		Index pp. Add'l 50 Copies @ 2.00.....	12.00
		234 pp. Text 50 Copies @ 6.70.....	1567.80
		50 Add'l. Copies Text @ 2.00.....	468.00
		Footnotes.....	8.00
		Tabular Matter.....	81.60
		Bold Face Folios @.50 per page.....	117.00
		6 Inserts - 50 Copies.....	154.00
		6 Inserts 50 Add'l. Copies.....	77.00
			2,598.40
		D.C. Sales Tax	77.95
			2,676.35



Unless specifically exempt by law, a sales tax of 3% is imposed on all types of printing actually delivered within the District of Columbia regardless of the geographical location of the purchaser.

BEST COPY AVAILABLE
from the original bound volume



APPENDIX B

SCHEDULE OF COSTS PETITIONER JUAREZ GAS COMPANY, S. A.
IS ENTITLED TO RECOVER FROM INTERVENORS
DEL NORTE NATURAL GAS COMPANY AND
SOUTHERN UNION GAS COMPANY

Brief of Petitioner:

1 cover at \$9.50	\$ 9.50
3 pp. Index at \$5.50	16.50
63 pp. Text at \$3.50	225.50
Footnotes	14.00
D. C. Sales Tax	<u>16.74</u>
	\$ 282.24

Reply Brief of Petitioner:

1 cover at \$9.50	\$ 9.50
2 pp. Index at \$5.50	11.00
11 pp. Text at \$3.50	38.50
Footnotes	7.50
D. C. Sales Tax	<u>4.58</u>
	\$ 71.08

Joint Appendix:

1 cover at \$9.50	\$ 9.50
6 pp. Index at \$5.50	33.00
234 pp. Text at \$3.50	819.00
Footnotes	8.00
Tabular Matter	81.60
Bold Face Folios at \$.50 per page	117.00
Inserts	231.00
D. C. Sales Tax	<u>77.95</u>
	\$ 1,377.05

Sub-total

\$ 1,730.37

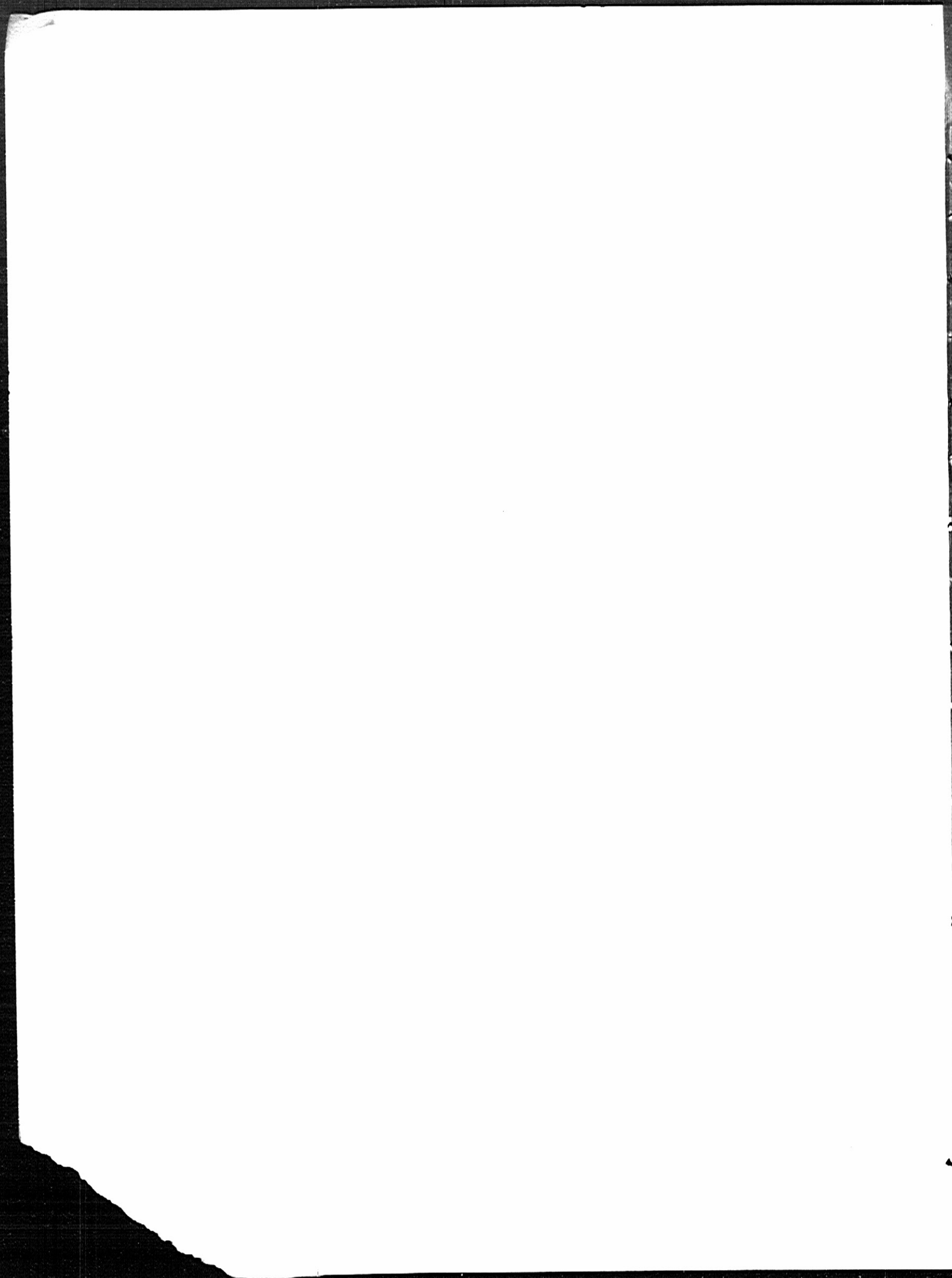
Less -

Amounts paid to Petitioner by Inter-
venors as reimbursement for the cost
of printing record designations of
Intervenors

168.98

Grand Total

\$ 1,561.39



CERTIFICATE OF COUNSEL

I hereby certify as a member of the Bar of this Court, and as attorney for Petitioner in the foregoing Petition for Modification of Judgment, that said Petition is filed not for vexation or delay, but in the good faith belief that it is meritorious, well founded, and should be granted for the reasons stated therein.

/s/ Philip R. Ehrenkranz

Philip R. Ehrenkranz

Dated: March 27, 1967

BEST COPY AVAILABLE
from the original bound volume

154 ✓

DLB-F-L
11/25/66
(3)

BRIEF FOR PETITIONER

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

WILLIAM J. GROVE
PHILIP R. EHRENKRANZ
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Of Counsel:

GROVE, JASKIEWICZ, GILLIAM
AND PUTBRESE

600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Attorneys for Petitioner
United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 5 1966

July 5, 1966

Nathan J. Paulson
CLERK

STATEMENT OF QUESTIONS INVOLVED

1. Where interdependent applications proposed abandonment, construction and operation of interstate and international facilities to deliver and sell natural gas in Mexico to Petitioner and to a second proposed distributor for resale in competition with Petitioner and where the Petition to Intervene raised issues regarding economic and financial feasibility of the interdependent applications, the propriety and reasonableness of an arrangement for the construction and lease of international facilities and adverse effects upon Petitioner if the Applications were granted, did Respondent err in denying the Petition to Intervene for the reasons that (1) Respondent had no jurisdiction over a distributor franchise, (2) the subject matter of the Petition to Intervene did not affect interstate commerce, and (3) Respondent could not consider the subject matter of the Petition in passing upon the merits of the Applications.

2. Did Respondent err in denying Petitioner the right, as a representative of the public, to intervene and assure that Respondent complied with the Natural Gas Act, Executive Order No. 10485, and Rules and Regulations issued by Respondent implementing such statute and Executive Order?

3. Are the orders under review void because of (1) absence of an interdependent application required by Executive Order No. 10485 and implementing regulations, (2) disregard by Respondent for proper international relations, (3) disregard by Respondent of evidence of violations of law affecting economic and financial feasibility of the distributor and by an applicant affecting character, (4) holding a non-public hearing in contradiction of an extant Notice, and (5) failing to make basic findings required by law?

INDEX

	Page
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATUTES, TREATIES, REGULATIONS AND RULES INVOLVED	9
STATEMENT OF POINTS	11
SUMMARY OF ARGUMENT	12
ARGUMENT	14
I. Petitioner Established a Substantial Interest Under Section 15(a) of the Act in the Subject Matter of the Interdependent Applications	14
A. Petitioner's Interest	15
B. The Matters Set Forth	24
C. Effect Upon Interstate Commerce	27
II. The Orders Under Review Are Void	29
A. Absence of an Application by Southern for Authorization To Construct International Facilities	30
B. Disregard by Respondent for International Relations	32
C. Disregard by Respondent of Violations of Law by Gas Natural and Inability of Gas Natural To Charge Rates Proposed	35
D. Disregard by Respondent of Violations of Law by Southern	36
E. The Non-Public Hearing	37
F. Failure of Respondent To Make Basic Findings Required by Law	38
CONCLUSION	39

APPENDIX	Page
Provisions of the Natural Gas Act	1a
Rules of Practice and Procedure under the Natural Gas Act	6a
Regulations under the Natural Gas Act	12a
Executive Order 10485	20a

TABLE OF AUTHORITIES

CASES:

<i>American Louisiana Pipe Line Co.</i> , 28 FPC 41 (1962) ..	21-22
<i>American Louisiana Pipe Line Co.</i> , 30 FPC 698 (1963) ..	22
<i>Associated Industries of N.Y. v. Ickes</i> , 134 F. 2d 694 (2nd Cir. 1943)	29
<i>Blue Ridge Gas Co.</i> , 19 FPC 1120 (1958)	17-18
<i>Central Illinois Public Service Co. v. FPC</i> , 338 F. 2d 682 (7th Cir. 1964)	22-23
<i>Cia Mexicana de Gas, S. A. v. FPC</i> , 167 F. 2d 804 (5th Cir. 1948)	19-20
<i>Eastern-Central Motor Carriers Ass'n. v. United States</i> , 321 U.S. 194 (1944)	38
<i>Guam v. Federal Maritime Commission</i> , 117 App. D.C. 296, 329 F. 2d 251 (1964)	38
<i>ICC v. J-T Transport Co.</i> , 368 U.S. 81 (1961)	38
<i>Kansas Pipe Line Co.</i> , 2 FPC 29 (1939)	24
<i>Lake Ontario Land Development, etc. v. FPC</i> , 93 App. D.C. 351, 212 F. 2d 227 (1954)	34
<i>Mississippi River Fuel Corp.</i> , 9 FPC 198 (1950)	26, 27
<i>Montana-Dakota Utilities Co.</i> , 8 FPC 409 (1949)	26, 27
<i>Michigan Consolidated Gas Co. v. FPC</i> , 108 App. D.C. 409, 283 F. 2d 204 (1960)	38
<i>Midwestern Gas Transmission Co. v. FPC</i> , 103 App. D.C. 360, 258 F. 2d 660 (1958)	36
<i>National Coal Association v. FPC</i> , 89 App. D.C. 135, 191 F. 2d 462 (1951)	20
<i>Northwest Natural Gas Co.</i> , 13 FPC 1249 (1954)	24, 25
<i>Office of Communication of the United Church of Christ v. FPC</i> , (D.C. Cir., March 25, 1966, Case No. 19,409)	20, 29
<i>Panhandle Eastern Pipe Line Co.</i> , 5 FPC 472 (1946) ..	34
<i>Philadelphia, etc. Steamship Co. v. Pennsylvania</i> , 122 U.S. 326 (1887)	28

	Page
<i>Public Service Commission of New York v. FPC</i> , 111 App. D.C. 153, 295 F. 2d 140 (1961)	37
<i>Power Authority of the State of New York</i> , 13 FPC 172 (1953)	34
<i>Reynosa Pipe Line Co.</i> , 5 FPC 130 (1946)	19
<i>SEC v. Chenery Corp.</i> , 332 U.S. 194 (1947)	38
<i>Sangamon Valley Television Corp. v. United States</i> , 106 App. D.C. 30, 269 F. 2d 221 (1959)	37
<i>Virginia Petroleum Jobbers Ass'n. v. FPC</i> , 104 App. D.C. 106, 259 F. 2d 921 (1958)	17-18, 20
<i>Vitarelli v. Seaton</i> , 359 U.S. 535 (1959)	37
<i>WKAT, Inc. v. FCC</i> , 103 App. D.C. 324, 258 F. 2d 418 (1958)	36

STATUTES:

Natural Gas Act, 52 Stat. 821 (1938) 15 U.S.C. § 717,
et seq.

Section 3	2, 3, 9, 10, 11, 13, 24, 25, 27, 28, 32, 38
Section 7	2, 9-10, 11, 13, 17, 24, 25, 27, 28, 29, 38
Section 15	10, 11, 14, 23
Section 19	1, 8, 10, 19, 21, 23

MISCELLANEOUS:

FPC Rules of Practice and Procedure under the Nat-
 ural Gas Act, 18 C.F.R. § 1, *et seq.*

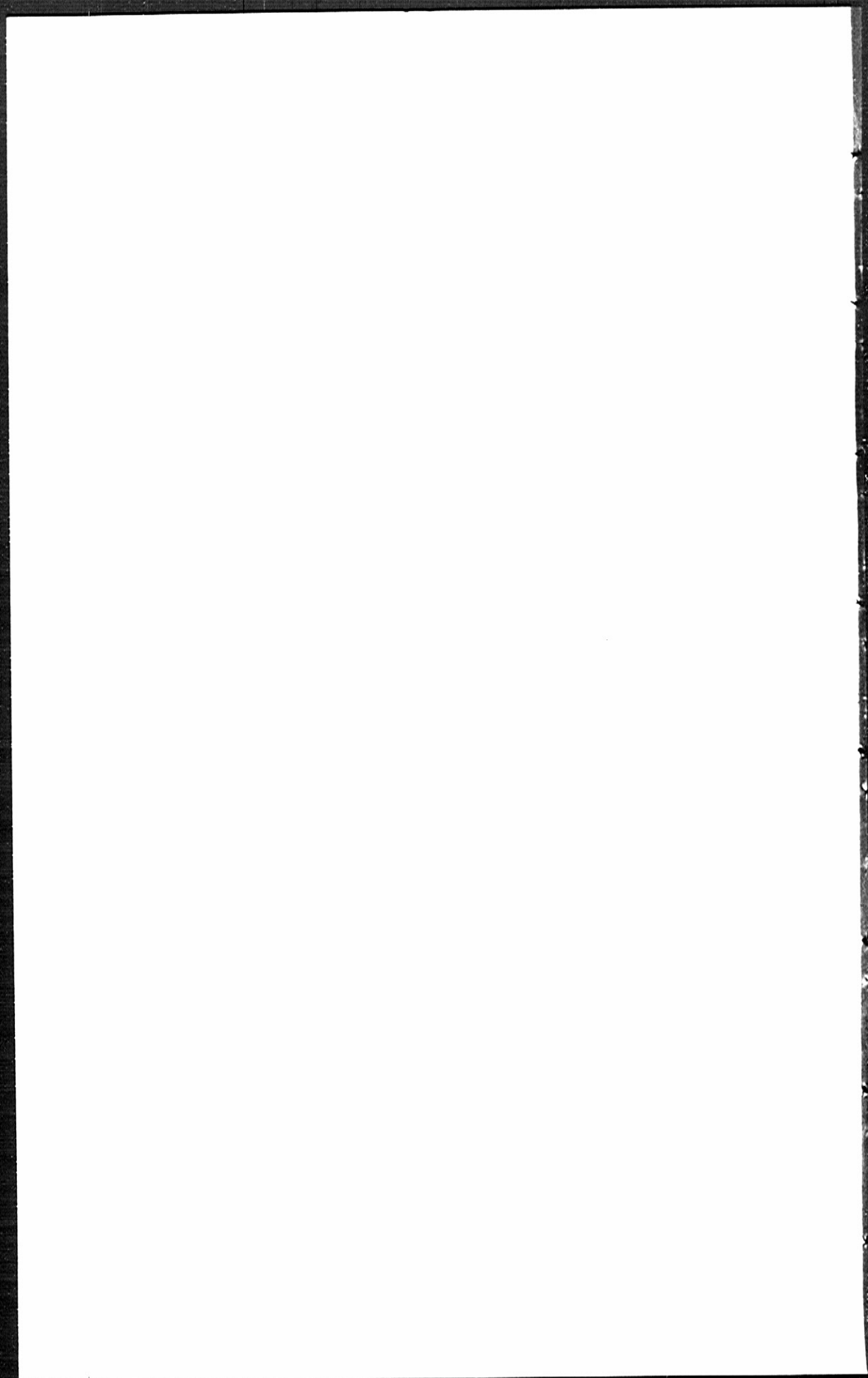
Section 1.5	10, 31
Section 1.8	10
Section 1.32	10
Section 1.34	10

FPC Regulations under the Natural Gas Act, 18 C.F.R.
 § 153, *et seq.*

Section 153.1-8	10, 31
Section 153.10-12	10, 12, 14, 29, 30, 32, 36
Section 157.5	10, 11
Section 157.13	11, 31
Section 157.14	24-25

Executive Order 10485

2, 3, 10, 11, 12, 13, 14, 29, 30, 32, 36, 38



IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

Jurisdiction is in this Court pursuant to Section 19(b) of the Natural Gas Act ("Act") (15 U.S.C. § 717r(b)). The Orders of which review is sought are final Orders of Respondent. An appropriate and timely Application for Rehearing was filed by Petitioner pursuant to and in accord with the requirements of Section 19 of the Act (15 U.S.C. § 717r).

STATEMENT OF THE CASE

This appeal challenges the lawfulness of Orders of Respondent on two basic grounds: (1) denial of the right of Petitioner to intervene, and (2) failure and refusal to comply with and apply proper criteria of the Act, Executive Order, and Respondent's Rules and Regulations under the Act.

The final orders of Respondent (1) deny Petitioner intervention in proceedings on interdependent applications involving interstate and foreign commerce, (2) issue certificates of public convenience and necessity pursuant to Section 7(c) and (e) of the Act (15 U.S.C. §§ 717f(c) and (e)), and authorize construction and operation of facilities for and transportation and sale of natural gas in interstate commerce for exportation to Mexico for resale within the City of Juarez by Petitioner and by a new distribution company, (3) permit, pursuant to Section 7(b) of the Act (15 U.S.C. § 717f(b)) cessation of present transportation and sale and use of facilities therefor to effect exportation of natural gas to Mexico for resale by Petitioner in the City of Juarez, (4) authorize, pursuant to Section 3 of the Act (15 U.S.C. § 717b) exportation of natural gas, as above noted, and approve assumption by contract assignment of sale and delivery obligations to Petitioner, and (5) issue a Presidential Permit pursuant to authority delegated in Executive Order No. 10485, authorizing operation, maintenance and connection only of international facilities to effect the aforesaid exportation; no application has been filed for authorization to construct such facilities, notwithstanding that Executive Order No. 10485 and Respondent's Regulations require such filing.

El Paso Natural Gas Company ("Gas Co.") and El Paso Gas Transportation Corporation ("Transportation"), on October 12, 1965, filed in Docket No. CP66-105, a joint application pursuant to Sections 7(b) and 7(c) of the Act (R. 15-131). Gas Co. requested (1) authorization

to abandon the sale of natural gas to Southern Union Gas Company ("Southern") and (2) a certificate of public convenience and necessity authorizing construction of facilities necessary to effect a sale of natural gas to Del Norte Natural Gas Company ("Del Norte") and delivery thereof to Transportation. Transportation requested (1) permission to abandon the transportation of natural gas for Southern and (2) a certificate of public convenience and necessity authorizing construction and operation of facilities and transportation of natural gas for Del Norte.

Del Norte, on October 12, 1965, in Docket No. CP66-104, filed an application pursuant to Section 3 of the Act for authorization to export natural gas into Mexico to Gas Natural de Juarez ("Gas Natural") and to Petitioner (R. 132-185). Concurrently, Del Norte filed, in Docket No. CP66-106, an application pursuant to Executive Order No. 10485, for a Permit authorizing operation, maintenance and connection of facilities at the International Boundary to effect said exportation (R. 186-229).

Southern, on October 19, 1965 filed, in Docket No. G-513, an application for rescission of its Presidential Permit authorizing exportation of natural gas to Petitioner (R. 230-235).

Gas Co. presently sells natural gas to Southern, and Transportation transports that gas for Southern; such natural gas is sold by Southern to Petitioner pursuant to a contract between Southern and Petitioner.

Del Norte proposes to sell and deliver natural gas to Petitioner by assuming the contract obligations of Southern, and to sell and deliver natural gas to Gas Natural, a new distributor which proposes to render natural gas service in a portion of the City of Juarez not presently served by Petitioner. All international facilities are proposed to be constructed by Southern and leased to Del Norte. The agreement for the assignment and lease contains a formula

for payment based upon volume and type of resale, and provides for a guaranteed annual minimum charge. Petitioner, upon receiving a copy of the several applications, addressed a telegram and letter to the Secretary of Respondent on October 22, 1965 stating that it was "not agreeable" to a transfer of the contractual obligations of Southern to Del Norte (R. 236-238).

Respondent, on October 28, 1965, issued its Notice of Applications and provided for the filing of Petitions to Intervene on or before November 19, 1965 (R. 241). The Notice provided that a hearing would be held without further notice if no protest or petition to intervene were filed within the time required, but "if a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given." (R. 244).

Petitioner, on November 5, 1965, timely filed its Petition to Intervene in each of the several dockets (R. 245-253). Petitioner set forth facts to demonstrate its interest in the subject matter, stated its opposition to the granting of the application in each of the dockets, and that it would participate actively in the proceedings to the end that the record, appropriately developed, would require a conclusion on the facts and law that granting of the applications would neither be consistent with the public interest nor required by the public convenience and necessity.

Thereafter, on November 18, 1965, Del Norte filed a Supplement to its Application submitting additional data (R. 258-291).

In the interim, Respondent, on November 12, 1965, addressed letters to the Secretary of State and the Secretary of Defense submitting a draft of a Permit and requesting a statement of view with respect to the exportation. (R. 254-257) By letter dated November 24, 1965, the Assistant Secretary of Defense advised Respondent that the lan-

guage of the draft permit was acceptable to the Department of Defense and issuance of the permit was recommended (R. 295). By letter dated November 26, 1965, the Department of State advised Respondent that if it were to concur with suggestions of the United States Commissioner on the International Boundary and Water Commission, "the Department perceives no foreign policy reason to withhold issuance of the permit." (R. 296).

The Ambassador to the United States from the Republic of Mexico, by a letter of December 8, 1965, to the Secretary of State referred to the several Applications, the Petition to Intervene, the opposition thereto and the guarantee of hearing constitutionally protected in United States and Mexico, and requested him to use his good offices to assure that the request of Petitioner for participation in the instant proceeding be granted (R. 299, 299A). Said request was discussed by the Department of State with the Special Assistant to the Chairman of Respondent as late as December 14, 1965 (R. 299B), duly translated, and the original and translation thereof transmitted to such Special Assistant on December 15, 1965 (R. 299B).

The Vice Chairman of Respondent, on December 28, 1965, signed a Permit in Docket No. CP66-106 authorizing Del Norte "to operate, maintain and connect" natural gas transmission facilities at the International Boundary (R. 310-316). Article 2 of said Permit describes the international facilities involved in these interdependent applications as (1) 5210 feet of 12 inch transmission line and the measuring and regulating station, to be installed by Southern, (2) 7000 feet of 6 inch transmission line and a measuring regulating station, to be installed by Southern, (3) 500 feet of 6 inch line and 1800 feet of 4 inch transmission line, to be installed by Southern, and (4) existing facilities consisting of 2190 feet of 6 inch transmission line in place. (R. 311-312) Respondent stated that the Secretary of State and Secretary of Defense "favorably recommended that the permit be granted . . .". (R. 311).

The following day, December 29, 1965, Respondent issued two Orders. In Docket No. CP66-105, a certificate of public convenience and necessity was issued to Gas Co. and Transportation. Gas Co. was authorized to sell and deliver natural gas to Del Norte, and abandonment of the sale of natural gas to Southern was approved. Transportation was authorized to construct and operate facilities to transport for, and deliver natural gas to Del Norte, and to abandon the transportation of natural gas for Southern (R. 305-308). Respondent noted that it held a "hearing" on December 22, 1965, and, on its own motion, received and made a part of the record all evidence, including the applications and exhibits, submitted in support of the authorizations sought (R. 306). Upon such consideration of such record, it found that the proposed transportation and sale of natural gas by Gas Co. and Transportation would be in interstate commerce subject to the jurisdiction of the Commission, that the construction and operation of the facilities and the transportation and sale proposed are required by the public convenience and necessity, and that the service proposed to be abandoned is subject to the jurisdiction of the Commission and permitted by the public convenience and necessity. Additionally, the Commission noted that "concurrently herewith" an order authorizing Del Norte to export natural gas "will be issued" and a Permit "will be" released authorizing the "operation and maintenance of facilities at the International Boundary by Del Norte." (R. 307).

The second Order issued December 29, 1965, in Docket Nos. CP66-104 and G-513, authorized exportation of natural gas by Del Norte, terminated authorization to Southern to export natural gas to Petitioner, and denied the Petition of Juarez Gas Company for leave to intervene in each of the four (4) interdependent applications (R. 300-304). The Order noted that "concurrently herewith" a Permit authorizing maintenance and operation of facilities at the International Boundary "will be released" to Del Norte,

that Gas Co. and Transportation would be authorized to sell and deliver natural gas to Del Norte for resale and exportation, and that Southern's extant permit and authorization to export "will be" revoked.

Respondent characterized the Petition to Intervene as contending only that it was not consistent with the public interest to authorize exportation of natural gas for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. Respondent held that "The Commission cannot assume the obligation of determining local franchise rights in Mexico." (R. 301), and that "... what Juarez Gas is seeking by its request to participate in these proceedings ... relates to the determination of franchise rights relating to distribution of natural gas in foreign countries. Any determinations made by Mexican authorities having jurisdiction over such matters will be accepted by this Commission." (R. 302). Ordering Paragraph (E) provided:

"(E) Inasmuch as Juarez Gas has not shown that its participation in the proceedings in Docket Nos. G-513, CP66-104, CP66-105 and CP66-106 is in the public interest or that the matters set forth in the petition affect interstate commerce or can properly be considered by the Commission in determining the merits of the subject applications, the petition is denied." (R. 304).

The Special Assistant to the Chairman, on December 29, 1965, responded to the December 15, 1965 letter from the Department of State and advised that the "Mexican note" (the formal request of Ambassador Margain) had been "brought to the attention of the Commission before it acted in this matter." Additionally, with reference to the Order issued December 29, 1965, the response suggested:

"... I believe that you will find the order to be self-explanatory with regard to the position of the Commission where there is a conflict among distributors whether located within one of the United States or within a foreign country." (R. 299C).

On January 14, 1966, Petitioner filed, pursuant to Section 19(a) of the Act, its Application for Rehearing (R. 324-392) and Motion for Stay (R. 318-323). Petitioner asserted numerous errors of law noting, in particular, that Petitioner was the present public utility into whose franchise area the increased volumes of natural gas were intended ultimately to be served in competition with Petitioner, that Petitioner objected to cancellation of the Presidential Permit in Docket No. G-513, wherein the Commission referred to earlier Commission authorizations and Presidential Permits to which Petitioner was a party, that Petitioner objected to the unilateral assignment of its present gas supply contract with Southern to Del Norte, that economic and financial detriment would result to Petitioner and to the ultimate consumers in the City of Juarez, that Petitioner has proposed further expansion of facilities and service so as to render service to substantially all of the City of Juarez and, accordingly, had already filed appropriate plans as required by the laws of Mexico, and, that no purpose or reason exists or has been shown warranting assignment of the Southern-Juarez Gas Company contract to Del Norte, or justifying the construction and lease arrangement between Southern and Del Norte, and the minimum annual rental charges therein agreed upon. Petitioner further asserted basic error in (1) the holding of the non-public hearing on December 22, 1965 without any notice thereof to Petitioner or to the public, contrary to and in direct contradiction of the prior public notice issued October 28, 1965; and (2) the refusal and failure to provide opportunity for hearing to Petitioner upon issues of fact and law raised in the Petition to Intervene including, *inter alia*, economic and financial feasibility of the proposals of Gas Co. and Transportation and Del Norte, the economic feasibility of the proposal and proposed operations of Gas Natural, and the complete interdependence and interrelationship of each of the applications and their necessary dependence upon the ability

of the distribution company Gas Natural to operate and function economically and financially feasibly.

Petitioner called particular attention to the failure and refusal of Respondent to mention or, appropriately, to take into consideration the views and concern of the foreign country involved by failing to even recognize the request of the Ambassador of Mexico to the Secretary of State to use his good offices so that the request of Petitioner for participation in the hearing would be granted.

Respondent, on February 1, 1966, issued its Order denying rehearing and stay (R. 419-420). Said Order again emphasized the prior holding of Respondent that the petition to intervene requested the Commission to determine which of two distributors has the legal right to distribute natural gas in the community. Respondent emphasized that "the Federal Power Commission is not the proper forum in which movant can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural." Notwithstanding the meticulousness with which the basic errors of the Commission had been set forth in the Application for Rehearing, Respondent held that the application for rehearing did not set forth any new facts or principles of law indicating that the Commission "was in error in denying movant's Petition or in issuing the orders and permit." (R. 420).

Thereafter, this appeal was taken promptly to this Court. A Motion for Stay was denied without hearing oral argument.

STATUTES, TREATIES, REGULATIONS AND RULES INVOLVED¹

The statutes involved are the following sections of the Natural Gas Act: Section 3 (52 Stat. 822 (1938)), 15 U.S.C. § 717b; Section 7(b) (52 Stat. 824 (1938)), 15 U.S.C. § 717f(b); Section 7(c) (52 Stat. 825 (1938)), as amended

¹ See Appendix to this Brief.

(56 Stat. 83 (1942)), 15 U.S.C. § 717f(c); Section 7(e) (56 Stat. 84 (1942)), 15 U.S.C. § 717f(e); Section 15(a) (52 Stat. 829 (1938)), 15 U.S.C. § 717n(a); and Sections 19(a) and 19(b) (52 Stat. 831 (1938)), 15 U.S.C. § 717r(a) and (b).

Executive Order No. 10485, issued September 3, 1953 (18 FR 5397), delegates to the Federal Power Commission performance of certain functions theretofore performed by the President in respect to natural gas facilities located on the borders of the United States. Section 1(a)(2) of this Executive Order requires filing of an application for a permit for the construction, operation, maintenance or connection at the borders of the United States of facilities for the exportation of natural gas to a foreign country. Section 1(a)(3) thereof prescribes the criteria to be applied. Section 3 thereof authorizes Respondent to promulgate Rules and Regulations to be applied in exercise of the power delegated.

The following Rules of Practice and Procedure under the Natural Gas Act are involved: Section 1.5(a) which relates to general requirements for applications, Section 1.8 which relates to interventions, Section 1.32 which relates to shortened procedures, and Section 1.34 which relates to Applications for Rehearing.

The following Regulations under the Natural Gas Act are involved: Sections 153.1-153.8, inclusive, which relate to an application under Section 3 of the Act. Sections 153.10-153.12 relate to an application for the construction, operation, maintenance or connection of facilities for exportation of natural gas as required by Executive Order No. 10485, Sections 157.5-157.22, inclusive, relate to applications for certificates of public convenience and necessity under Section 7 of the Act, including applications for construction, operation, maintenance, sale, service and abandonment of any sale or service. Every requirement under such Regulations is made a "forthright obligation" by Sections 157.5(b)

and (c), and Section 157.13(c) requires that all "interdependent" applications be filed concurrently.

There is no treaty which affects the substantive or procedural merits of this appeal.

STATEMENT OF POINTS

1. The Petition to Intervene contained averments of fact establishing that Petitioner has a direct and substantial interest comprehended by Section 15(a) of the Act in the subject matter of the interdependent Applications under Sections 3, 7(b), 7(c) and 7(e) of the Act and Executive Order No. 10485, and that such interest would be affected adversely by the final orders of Respondent issued therein. Petitioner has a competitive interest within the meaning of Section 15(a) of the Act in the proceedings before the Commission, a fact which Respondent's orders do not deny. Respondent misapplied its prior holdings in predicated denial of intervention upon absence of power to issue a franchise to a given distribution company. Respondent equally erred in holding that the subject matter of the Petition to Intervene does not affect interstate commerce, and that such subject matter cannot be considered by Respondent in passing upon the merits of the Applications.

2. Respondent erred in denial to Petitioner of the right to participate in a hearing upon the applications as a party to the proceedings and, as a representative of the public, to prevent unlawful official misconduct in order to vindicate the public interest and assure that Respondent performs its delegated duties and that the administrative procedures employed are consistent with due process of law.

3. The Orders under review are void as a matter of law because of (1) denial to Petitioner of the right to intervene and participate in establishing of record relevant and material facts which, in vindication of the public interest, would require denial of the several applications, (2) failure of Respondent to require filing of an application by

Southern in accord with Executive Order No. 10485 and Sections 153.10-153.12 of the Regulations under the Natural Gas Act for "construction" of international facilities; (3) holding by Respondent of a non-public hearing contrary to the specific terms of the prior public Notice, and (4) failure of Respondent to employ established criteria by which the statutory standards of public convenience and necessity and public interest are to be applied.

SUMMARY OF ARGUMENT

I. Respondent erred in denying Petitioner the right to intervene and to participate in a formal hearing. The Petition to Intervene averred, *inter alia*, that ruinous competition and duplication of facilities with resultant adverse effects upon Petitioner would ensue from granting the Applications; that no showing was made that granting the Applications would not result in economic and financial ruin to Gas Natural, and would not result in serious adverse economic consequences to Petitioner; and, that Gas Natural had not secured all requisite consents to receive, operate and serve natural gas as proposed. The Petition to Intervene raised, *inter alia*, as issues of fact and law to be resolved upon a fully developed evidentiary record, the economic and financial feasibility of the proposals of Gas Co., Transportation, and Del Norte, inasmuch as the same are necessarily dependent upon the ability of Gas Natural to operate lawfully, economically and financially feasibly; and, the economic and financial feasibility of the proposed operations of Gas Natural. Petitioner asserted that the facts adduced upon an evidentiary record developed upon full hearing would compel denial of the several Applications.

Respondent recognized that granting of the Applications would enable a "second distribution company to invade the franchise territory of an existing supplier." (R. 301) It held, however, that it did not have the power to determine which of two distributors has the legal right to distribute

natural gas in the City of Juarez and, concluded, therefore, that the Federal Power Commission is not the proper forum in which Petitioner can receive relief from alleged detriments to it occasioned by distribution of natural gas in the City of Juarez, Mexico. Additionally, in denying the right of intervention in each application, it held that the matters set forth in the petition did not "affect interstate commerce" and could not be considered in determining the "merits" of the interrelated and interdependent applications (R. 304).

Respondent erred in refusing to recognize that (1) it is the interest of Petitioner in the subject matter which is controlling, and not jurisdiction to award a franchise to a given distribution company; (2) because of the interrelated and interdependent Applications under Sections 3 and 7(b) and (c), and Executive Order No. 10485, Respondent is under a duty to determine the economic and financial feasibility of the distributing company operations as proposed, as a condition precedent to issuance of a certificate of public convenience and necessity to Gas Co. and Transportation; (3) the economic and financial feasibility of Gas Natural operations as proposed necessarily "affect interstate commerce"; and (4) the basic issues of fact and law raised by the Petition to Intervene must be considered in passing upon the "merits" of the interdependent applications.

II. Petitioner has a direct and immediate interest in the subject matter of the interdependent applications. Such interest affects and is affected by the Applications of Gas Co. and Transportation. The issues of fact and law raised by Petitioner, particularly regarding economic and financial feasibility of the Gas Natural proposal, directly affect interstate commerce. Respondent thus erred in denying to Petitioner the right and concomitant duty to prevent unlawful official action in order to vindicate the public interest, and to assure that duties and responsibilities delegated to the Respondent by Congress and the President of the United States are in fact performed. As shown, *infra*,

denial of intervenor status to Petitioner has enabled Respondent to ignore duties imposed by the Act and Executive Order No. 10485, which duties are recognized by Respondent in the Regulations promulgated by it under such Act and Executive Order.

III. The Orders under review are void because of fundamental errors of law committed by Respondent. Necessarily, denial of party status to Petitioner requires setting aside the Orders and remanding the proceeding for a hearing in which Petitioner will participate fully. The Orders are void, as is the entire proceeding, because (1) a necessary and interdependent application has not been filed by Southern, as required by Executive Order No. 10485 and Sections 153.10-153.12 of the Regulations, for "construction" of the international facilities proposed, (2) Respondent failed to apply appropriate criteria by which to determine compliance with the statutory standards of public convenience and necessity and public interest, (3) Respondent has violated extant Orders by holding a non-public hearing without public notice to any person, and (4) Respondent has failed to make required basic findings of fact upon which to base ultimate findings and conclusions.

ARGUMENT

I. PETITIONER ESTABLISHED A SUBSTANTIAL INTEREST UNDER SECTION 15(a) OF THE ACT IN THE SUBJECT MATTER OF THE INTERDEPENDENT APPLICATIONS.

The Petition to Intervene established these basic facts: (1) Petitioner has an interest under Section 15(a) of the Act in the subject matter of the proceeding before the Commission which would be adversely affected by an order granting the Applications, (2) the subject matter of all Applications affects interstate commerce, and (3) the issues of fact and law raised by Petitioner, *i.e.*, the subject matter, must be considered and determined by the Commission.

A. Petitioner's Interest

The Petition to Intervene (R. 245-253) established that Juarez Gas Company was the sole public utility distributor of natural gas in the City of Juarez and has operated under present management since 1935; that it has continuously expanded and extended distribution facilities and service within the City of Juarez; that it has proposed further expansion of facilities and service so as to render service to substantially all of the City of Juarez and environs; that in furtherance of and to implement such expansion, it filed appropriate plans as required by the law of Mexico, as early as March, 1964, and subsequent thereto; that Juarez Gas Company reasonably expects the entirety of such plans to be approved, and will inaugurate new and increased service in accord with such plans; that granting of the Applications would adversely affect it and its present and future customers; that no good purpose or reason exists or has been shown, or averred which warrants approval of (a) assignment to Del Norte of the Southern-Juarez Gas Company contract, (b) the proposed construction and lease arrangement between Southern and Del Norte, and (c) the minimum annual rental charges agreed upon between Southern and Del Norte; that ruinous competition and duplication of facilities with concomitant adverse effects will result from approval of the Applications; that no evidentiary showing was made that granting of the Applications will not result in (a) economic and financial ruin to Gas Natural, and (b) serious adverse economic consequences to Juarez Gas Company, the present distributor; that Gas Natural has not, and it is highly improbable that it ever will, secure all necessary consents to receive, operate and serve natural gas as proposed; and, that upon an evidentiary record, developed upon full hearing, the resulting relevant and material facts at issue would, consistent with applicable principles of law, compel denial of the several Applications.

Respondent premised denial of intervention upon the following statement describing the position of Petitioner (R. 301):

"... Juarez Gas contends that it is not consistent with the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. The Commission cannot assume the obligation of determining local franchise rights in Mexico. It is not the purpose of regulation under the Natural Gas Act to deal with franchise rights relating to the distribution of natural gas in foreign countries ...".

Ordering Paragraph (E) of the December 29, 1965 Order in *Del Norte Natural Gas Company, et al.*, Docket No. CP66-104, *et al.*, expands this basic premise into a clearly erroneous final conclusion (R. 304):

"(E) Inasmuch as Juarez Gas has not shown that its participation in the proceedings in Docket Nos. G-513, CP66-105 and CP66-106 is in the public interest or that the matters set forth in the petition affect interstate commerce or can properly be considered by the Commission in determining the merits of the subject applications, the petition is denied."

In denying rehearing, Respondent thus reemphasized the basis for denial of intervention (R. 420):

"... It was pointed out in the order denying the petition for leave to intervene that it is not within the Commission's province to determine which of two distributors has the legal right to distribute natural gas in a community within a state where the issue has been raised. *American Louisiana Pipe Line Company, et al.*, Docket No. G-2306, *et al.*, 28 F.P.C. 41 ...".

Thus, Respondent has never held that Petitioner does not have an interest in the interdependent Applications which would be adversely affected by an order approving the several proposals. Respondent, in fact, *recognizes* that

Petitioner has a franchise which is being invaded by the new company, Gas Natural. The entire focus and force of Respondent's characterization of the Petition to Intervene is that there would be "a new and second distribution company to invade the franchise territory of an existing supplier." (R. 301). It is obvious, therefore, that granting of the Applications effectively restricts consummation of present plans of Petitioner to expand facilities and service throughout the entirety of the City of Juarez, will curtail future expansion, and effectively nullifies Petitioner's existing franchise rights. Clearly, the finding of Respondent regarding invasion of Petitioner's franchise was based upon facts set forth in the Petition to Intervene, and thus is conclusive that Petitioner, insofar as the subject matter of the interdependent Applications is concerned, represents an interest which is competitive to interests represented by the Applicants. As such, Petitioner falls within a class of persons judicially determined and recognized by this Court to have a right to intervene.

In *Virginia Petroleum Jobbers Ass'n. v. FPC*, 104 App. D.C. 106, 259 F. 2d 921 (1958), this Court reviewed an order² of Respondent in a proceeding under Section 7(a) of the Act denying intervention to Virginia Petroleum Jobbers Association essentially on the same grounds advanced here, viz:

"The questions presented by the petition filed by the Jobbers Association concern primarily matters pertaining to the local distribution of natural gas. Specifically they involve the questions as to whether Blue Ridge should be permitted to compete with the Jobbers Association in the cities in which Blue Ridge proposes to engage in the local distribution of natural gas and matters ancillary thereto. We are of the opinion that the question of whether or not a company which intends to engage in the local distribution of natural gas in interstate commerce in competition with other fuels and matters ancillary thereto are for reso-

² *Blue Ridge Gas Co.*, 19 FPC 1120 (1958).

lution by the State Commission, in this instance, the State Corporation Commission of the Commonwealth of Virginia. Jobbers Association does not question the fact that Blue Ridge has the necessary authority from the state and local authorities to engage in the distribution of natural gas as required by Section 7(a) and that it has only recently obtained a certificate of public convenience and necessity from the State Commission. We are of the opinion that the question of local public interest has been resolved by the local authorities. (19 FPC at 1121).

As it must do in the instant case, this Court emphatically rejected this position, stating (259 F. 2d at 926):

“Petitioner is properly in court at this time if it had a right to intervene; and if it had a right to intervene, denial of that right by the Commission was erroneous. Again, without prejudice to a later contrary showing by respondent, on the basis of the present record we believe that petitioner has shown it has a right to intervene in the Blue Ridge proceedings. Should the Commission approve the Blue Ridge application, the product of petitioner’s members will be in competition with natural gas introduced into a new market through interstate commerce. They will be directly competing for fuel revenues with both Blue Ridge and Atlantic, and thus would seem to have an undoubted right to intervene under the principles elaborated in *City of Pittsburgh v. Federal Power Commission*, 1956, 99 U.S. App. D.C. 113, 237 F. 2d 741, and *National Coal Association v. Federal Power Commission*, 1951, 89 U.S. App. D.C. 135, 191 F. 2d 462.”

Here, as in *Virginia Petroleum Jobbers*, approval by Respondent of the interrelated Applications places Petitioner in competition with the Applicants for a natural gas market in which gas which has flowed in interstate commerce is sold. Accordingly, Petitioner “will be directly competing for fuel revenues” with Gas Co., Transportation, Del Norte, and Gas Natural, and thus has “an undoubted right to intervene” under the principle enunciated by this Court in *Virginia Petroleum Jobbers*, *supra*.

In *Reynosa Pipe Line Co.*, 5 FPC 130 (1946), the Commission had before it an Application by Reynosa (a Texas corporation) to export natural gas into Mexico to Gas Industrial de Monterrey, S. A. (an association composed of Mexican corporations) for resale in the City of Monterrey, Mexico. A petition to intervene in opposition to Reynosa's Application filed by Compania Mexicana de Gas, S. A. (a Mexican corporation), a distributor of natural gas in Monterrey, *was granted* by the Commission to enable Compania Mexicana to protect its competitive interests (see 5 FPC at 132). That the facts in *Reynosa* are on all fours with the situation before the Commission in the instant case is obvious: (1) here, Del Norte (a Texas corporation) has applied to export natural gas into Mexico to Gas Natural (a Mexican corporation) for resale in the City of Juarez, Mexico; and (2) a petition to intervene in opposition to Del Norte's Application was filed by Petitioner (a Mexican corporation), a distributor of natural gas in Juarez. However, though the facts of the two situations be parallel, in *Reynosa* the Commission did *not*, as it did in the instant case, invoke a "policy" of non-interference in a distribution area, and specious reasoning based thereon in order to deny intervention. To the contrary, the Commission recognized Compania Mexicana's legitimate competitive interest to those interests advanced by the Applications involved, and, as it should have done here, granted intervention.

Reynosa was successful in obtaining export authorization, and Compania Mexicana obtained judicial review of the Commission's order granting such authority.³ Intervening in the court review proceedings, Reynosa moved to dismiss the petition for review on the ground that Compania was not an "aggrieved" party within the meaning of Section 19(b) of the Act. The Court held (167 F. 2d at 805-806):

³ *Cia Mexicana de Gas, S. A. v. FPC*, 167 F. 2d 804 (5th Cir. 1948).

"We make short work of Reynosa's motion to dismiss. We think it clear that petitioners are aggrieved parties within the meaning of the Act, and, as such, are rightfully here."

Referring to this specific holding, this Court, in *National Coal Association v. FPC*, 89 App. D.C. 135, 191 F. 2d 462 (1951) held (191 F. 2d at 465):

"The doctrine that a competitor belongs to the class of persons whose injury is sufficiently direct, and immediate to qualify as 'aggrieved' has been applied in a case brought under § 19(b) of the Natural Gas Act. In *Cia Mexicana de Gas v. Federal Power Commission*, 5 Cir. 1948, 167 F. 2d 804, 805-806, the court thought it 'clear' that a natural gas company which competed with a certificate applicant was entitled to seek judicial review of the order granting the certificate."

This Court held, further, that one who would be "aggrieved" is also a person who has a "right to intervene," stating (191 F. 2d at 467):

"The Commission itself admits, however, that it may not abuse its discretion. This, to us, means that there are some persons who have a right to participate in Commission proceedings and some who do not. *We think it clear that any person who would be 'aggrieved' by the Commission's order, such as a competitor, is also a person who has a right to intervene.* Otherwise, judicial review, which may be had only by a party to the proceedings before the Commission who has been 'aggrieved' by its order, could be denied or unduly forestalled by the Commission merely by denying intervention." (Emphasis supplied)⁴

Respondent, by urging that "It is not within the Commission's province to determine which of two distributors has the legal right to distribute natural gas in a community . . ." (R. 420) ignores entirely the interest of Petitioner

⁴ See also *Office of Communication of the United Church of Christ v. FCC*, (D.C. Cir., March 25, 1966, Case No. 19,409, Opinion, p. 8).

and, instead, apparently denies intervention because of its inability to control designation of the ultimate distributor, a fact which it need not consider in determining public interest and public convenience and necessity. It seeks to avoid the clear holdings that the right to intervene, as the right to appeal, depends on aggrievement "... [A]ggrievement, within the meaning of Section 19(b) ... is a status conferred by Commission upon a party who, though he may have no interests that must be considered in the administrative determination, is likely to suffer injury by that determination ...". *City of Pittsburgh v. FPC*, 99 App. D.C. 113, 237 F. 2d 741, 746 (1956).

Petitioner has shown such aggrievement and it is immaterial that Respondent does not have power to determine relative franchise rights in the City of Juarez, Mexico. Respondent has the power and the duty to require compliance with applicable law and its own implementing regulations and to make appropriate determination of fact regarding, *inter alia*, adequacy of markets to support the interdependent proposals, the economic and financial feasibility of such proposals, the propriety and reasonableness of the proposed assignment and construction-lease arrangement, and other specific matters, including character of an applicant and international relations. Such power and duty have not been exercised or performed in this proceeding.

American Louisiana Pipe Line Co., 28 FPC 41 (1962), relied upon by Respondent, does not support denial of intervention. American Louisiana holds only that *once* Respondent, upon evidence of record, has made the findings of fact and conclusions required by the statutory standards of public convenience and necessity and public interest, *i.e.*, adequacy of natural gas supply, demonstrated natural gas requirements within the community proposed to be served, economic and financial feasibility of the proposals of would-be distributors, Respondent will leave to the

state and local authorities determination of who shall, in fact, be such distributor. Respondent, upon a review of the Examiner's decision, agreed that the record supported the finding that service to Montrose, Iowa, would be economically and financially feasible. It concluded, however, that the "decision which [of two distributors] shall serve Montrose be left to those whose preferences are directly involved and whose welfare is directly concerned, where to do so would not adversely affect the public interest . . .". (28 FPC at 42). There, as here, franchises had been issued to both distributors. There, however, Respondent did exercise its power and did perform its duties to make appropriate and required determinations of fact in accord with the statutory standards.

In *American Louisiana Pipe Line Co.*, 30 FPC 698 (1963), the subject matter, appropos these proceedings, involved the distribution of natural gas to the City of Bushnell and the Village of Milford. Central Illinois Public Service Company, holder of an appropriate franchise, proposed, in conjunction with Panhandle Eastern Pipe Line Company and Trunkline Gas Company to render service to such communities. Bushnell and Milford intervened seeking an order requiring Panhandle and Trunkline, respectively, to sell directly to proposed municipally-operated natural gas distribution systems. The Examiner made detailed findings of fact and conclusions regarding all factors required to be considered in meeting the statutory standards and directed service by Panhandle to Bushnell and by Trunkline to Milford. Upon review, Respondent affirmed the findings of financial and economic feasibility and *then* concluded that designation of the person who should render the distribution service was a matter for local determination.

On appeal (*Central Illinois Public Service Co. v. FPC*, 338 F. 2d 682 (7th Cir. 1964)), the Court, in affirming, held that in applying the public convenience and necessity standard "the Commission should consider all relevant

factors in reaching a decision" (338 F. 2d at 686). Further, the Court held: "The Commission decided that it was satisfied that Milford would be able to use the gas reserved for it. However, whether the Village will legally be able to operate its system pursuant to the plan finally presented to the Commission, is a question which the Commission would leave to the state courts. We think the Commission's position on this question is proper." (338 F. 2d at 687).

Petitioner is *not* requesting and has never requested Respondent to determine relevant franchise rights in the City of Juarez (R. 336). Petitioner has requested that it be permitted to participate in the proceeding involving the interrelated applications to protect its interests. The several Applications are interdependent, and have the cumulative effect of introducing natural gas into the City of Juarez, competitive to that sold by Petitioner. Since the project put forth by such interdependent Applications is a single project which must fail if one of its component parts fails, Petitioner was wrongfully denied the opportunity to contest the feasibility of the component physically located in the United States, but whose efficacy results only from operation of the entire project in the United States and Mexico.

Denial of intervention by Respondent on the ground that the issue presented is one involving only a determination of local franchise rights, is, in itself, sufficient basis for reversal and remand, as such ground was rejected by this Court in *Virginia Petroleum Jobbers, supra*. Moreover, the facts and law are clear (1) that Petitioner has a legitimate competitive interest comprehended by Section 15(a) of the Act, and disregard thereof by Respondent constitutes an abuse of discretion; and (2) that Petitioner is "aggrieved" within the meaning of Section 19(b) of the Act through injury to such competitive interest occasioned by denial to Petitioner of the right to protect that interest through intervention in the proceedings below.

B. The Matters Set Forth

The "matters set forth" by Petitioner raised issues of fact regarding, *inter alia*, (a) the economic and financial feasibility of the proposals of Gas Co. and Transportation, Del Norte, and Gas Natural, and (b) the necessity, justification for and desirability of the proposed assignment by Southern to Del Norte of the Southern-Juarez gas contract and the terms and conditions in the proposed construction-lease arrangement between Southern and Del Norte, making specific reference to the minimum annual rental charges contained therein. Respondent erred in concluding that such matters could not "properly be considered in determining the merits of the subject applications . . ." (R. 304). Such holding is contrary to law and Commission precedent and requirements.

The statutory standards of public convenience and necessity and public interest of Sections 7(c), 7(e), and 3 of the Act impose upon the Commission duties to inquire into, and make findings with respect to many and oft-enumerated factors. Commencing with *Kansas Pipe Line Co.*, 2 FPC 29 (1939), the criteria by which public convenience and necessity is to be determined⁵ requires compelling evidence to establish, *inter alia*, adequacy of markets, adequacy of gas supply, that the rates proposed to be charged by an applicant do not discriminate between customers of the same class, and economic and financial feasibility of the proposal presented by the Applications.

Section 157.14(a)(11) (vi) and (vii) of the Regulations Under the Natural Gas Act require that an Application contain:

(vi) "A full description of all facilities, other than those covered by the application, necessary to provide service in the communities to be served, the estimated

⁵ In *Northwest Natural Gas Co.*, 13 FPC 1249, 1250 (1954) the Commission referred to *Kansas Pipe Line Co.*, *supra*, as having established minimum standards.

cost of such facilities, by whom they are to be constructed, and evidence of economic feasibility."

(vii) "A statement showing the franchise rights of applicant or other persons to distribute gas in each community in which service is proposed."

Under Sections 7(c) and 7(e) of the Act, proof of adequacy of markets and of economic and financial feasibility must include proof that the proposed markets do exist, that the rates at which natural gas is proposed to be sold to the ultimate consumer will permit development of such market, that the proposed distribution facilities are or will be capable of delivering natural gas to the ultimate consumers in adequate quantities to permit delivery of the maximum day and annual volumes proposed, that the rate proposed to be charged will in fact be charged, and that such rate will provide sufficient revenue to permit profitable operations by each person involved. Particularly does the latter element apply to the proposed distributor of such natural gas, including assurance of reasonable return on capital investment and amortization of the cost of the properties during a reasonably predictable useful service life of the facilities.

The statutory standard of Section 3 requires proof of similar facts and consideration of similar factors, *i.e.*, "the same fundamental considerations." *Northwest Natural Gas Co.*, 13 FPC 1249, 1250-1 (1954).

The foregoing "matters set forth in the petition" are matters which Respondent not only "could" consider but which it *must* consider in determining the merits of the instant Applications. The concession that it did *not* consider such issues of fact raised by Petitioner is a confession of error requiring that the Orders under review be set aside and the record remanded for a proper hearing in which Petitioner will be an active party.

With respect to the "matter" of the proposed construction-lease arrangement, the decisions of Respondent are

clear that the propriety and reasonableness of a contract for the construction of facilities and the subsequent lease and operation thereof by another who is subject to the jurisdiction of Respondent must be determined on the basis of evidence establishing exceptional circumstances and compelling public necessity.

In *Mississippi River Fuel Corp.*, 9 FPC 198 (1950), Respondent denied authorization to lease and operate certain facilities. With regard to the required review of the proposed construction-lease arrangement, Respondent held (9 FPC at 204, 205):

"The leasing arrangement proposed by applicant here, from the viewpoint of this individual case or of a pattern for natural-gas companies which are subject to the Commission's regulatory authority under the Natural Gas Act, presents novel features which may not be in the public interest."

* * *

"In the circumstances of this case, the record does not warrant, in our opinion, finding that the proposed leasing of the seven new compressor stations would be in the public interest or is required by public convenience and necessity. We do not consider that the leasing of natural gas transmission pipe-line facilities, to be owned by lessors that are not natural-gas companies and are not subject to regulation in the public interest under the Natural Gas Act, would serve the public interest under the circumstances here presented.

"Only a showing of exceptional circumstances and compelling public necessity should be considered as a justification for granting certificate authorization to a 'natural-gas company' to lease and operate newly or to be constructed natural gas pipe-line facilities."

In *Montana-Dakota Utilities Co.*, 8 FPC 409 (1949), Respondent reviewed a proposed construction-lease arrangement and, upon voluminous evidence, concluded, in authorizing the construction, lease, and operation, that the

agreement be revised to "expressly provide" certain prescribed terms and conditions (8 FPC at 424-5).

Thus, Respondent has a duty to consider "matters set forth" relating to the construction-lease agreement between Southern and Del Norte, which includes also assignment of the Southern-Juarez Gas Company contract and facilities used to effect sales thereunder.

Clearly, Respondent has erred in failing to require evidence regarding, and to make a finding of, "exceptional circumstances and compelling public necessity," and holding as a reason for denial of intervention that such evidence would be a "matter" which could *not* properly be considered in determining the merits of the Application. It compounded such error in refusing to permit a showing that such "circumstances" and "necessity" do not exist and that the terms and conditions in such contract are not in the public interest.

Upon remand and consideration of evidence adduced of record by Petitioner, Respondent could conclude that such construction-lease contract shall not be approved in accordance with *Mississippi River Fuel Corp., supra*, or it could approve the construction-lease arrangement subject to the condition that the agreement be issued to include specific and rigid provisions as in *Montana-Dakota Utilities Co., supra*.

C. Effect Upon Interstate Commerce

The Application of Gas Co. and Transportation in Docket No. CP66-105 seeks, under Sections 7(b) and 7(c) of the Act, respectively, authority to abandon the sale and service of natural gas to Southern and to construct additional *interstate* facilities to effect sales and transportation in *interstate commerce* to Del Norte. The *interdependent* Applications of Del Norte, in Docket Nos. CP66-104 and CP66-106, seek authorization under Section 3 of the Act and Executive Order No. 10485, respectively, to export

natural gas and to connect, maintain and operate international facilities for such exportation. The proposed international facilities are to be constructed by Southern.⁶

Thus, the Applications under Sections 3 and 7 of the Act are interdependent and, as the Notice of Applications states (R. 242), "The applications [under Section 7] incorporate a proposal by Applicant to provide natural gas to Ciudad Juarez, Chihuahua, Mexico, a community situated adjacent to the City of El Paso, Texas." The Notice proceeds with greater detail to demonstrate the interdependency of each Application with the contemplated Gas Natural proposal. Similarly, the Order issuing the Section 3 authorization to Del Norte refers to estimated natural gas requirements of Gas Natural (R. 300). Exhibit I to the Application of Gas Co. (R. 108-109) purports to reflect economic studies relative to requirements of Gas Natural. The sale and transportation of the natural gas proposed in the Gas Co. and Transportation Application is stated by Respondent to be "in interstate commerce subject to the jurisdiction of the Commission" (R. 307), and such gas will be sold by Petitioner and Gas Natural in Mexico.

The "matters" set forth by Petitioner's intervention petition thus related to a comprehensive project for exporting natural gas to Mexico after an interstate journey of such gas in the United States. Just as the whole is no less than the sum of its parts, so this project involving interdependent Applications constitutes and "affects" foreign and interstate commerce. See *Philadelphia, etc. Steamship Co. v. Pennsylvania*, 122 U.S. 326 (1887).

By thus holding that "the matters set forth in the petition [do not] affect interstate commerce . . ." (R. 304), the Commission has placed itself in the untenable position

⁶ Southern, however, did not file for appropriate authorization, but merely requested cancellation of extant authority issued in Docket No. G-513 to export natural gas to Petitioner. See *infra*, pp. 30-32.

of maintaining that Applications under Sections 7(b), 7(c) and 7(e) of the Act do not "affect" interstate commerce—a contradictory proposition refuted by the very terms of those Sections and its own conclusion in the interdependent Docket No. CP66-105 (R. 307).

II. THE ORDERS UNDER REVIEW ARE VOID.

Petitioner, having a right to intervene in the interdependent proceedings before Respondent, has the concomitant duty "to prevent alleged unlawful official action in order to vindicate the public interest . . ." *Associated Industries of N. Y. v. Ickes*, 134 F. 2d 694, 705 (2nd Cir. 1943). See *Office of Communications of the United Church of Christ v. FCC* (D.C. Cir., Case No. 19,409, March 25, 1966, Slip Opinion, p. 10).

Petitioner, in the Application for Rehearing, called specific attention to the basic errors of law committed by Respondent. Such basic error, in addition to the denial of intervention, related to (1) failure of Respondent to require filing of an application by Southern for authorization to "construct" the international facilities, as required by Executive Order No. 10485 and Section 153.10 of the Regulations under the Natural Gas Act, (2) disregard for proper international relations by failing to mention and honor the request of the Mexican Ambassador to the United States that Petitioner be allowed intervention and participation in a hearing upon the applications, and by misrepresenting the position of the Secretary of State, (3) evidence of violation of law by Gas Natural and inability to charge compensatory rates, all of which affect character and economic and financial feasibility of Gas Natural and each of the interdependent applications, (4) disregard of evidence of violation of law by Southern, affecting character of an applicant proposing to construct international facilities and lease the same pursuant to a construction-lease agreement, propriety of which was challenged by Petitioner, (5) holding of a non-public hearing

in direct contradiction of the terms of an extant order of Respondent, and (6) failure to make basic findings required by law.

A. Absence of an Application by Southern for Authorization To Construct International Facilities

The specific provisions of Executive Order No. 10485, Section 1, require filing of an Application for authorization for "construction" of facilities to export natural gas.⁷ Article 2 of the Permit issued December 28, 1965, in Docket No. CP66-106 describes fully all of such international facilities. Nevertheless, there has not been any application filed with Respondent requesting authority for and no Order has issued authorizing the "construction" of such facilities. The entire proceedings before the Commission are, therefore, void because of the absence of a necessary Application by Southern Union for authorization to construct and install the international facilities.

Section 153.10 of the Regulations Under the Natural Gas Act, relating to Applications for a Permit pursuant to Executive Order No. 10485 provides, in mandatory terms, that:

"Any person, firm, or corporation contemplating the construction of, or who is operating or maintaining facilities at the borders of the United States, for the exportation or the importation of natural gas to or from a foreign country, shall file with the Commission an application for a Presidential Permit, in compliance with Executive Order No. 10485, dated September 3, 1953.

"In connection with application hereunder, attention is directed to the provisions of §§153.1 and 153.5, inclusive, relative to applications for authorization to export or import natural gas to or from a foreign country under section 3 of the Natural Gas Act." (3 CFR, 1953 Supp., p. 106).

⁷ See Appendix, pp. 20a-22a.

Section 153.1, relating to Applications under Section 3 of the Natural Gas Act provides:

“(a) Any person proposing to export natural gas from the United States to a foreign country . . . pursuant to the provisions of Section 3 of the Natural Gas Act, shall make an application for authorization therefor under this part.

“(b) In connection with applications under this section, attention is directed to the provisions of §§ 153.10 and 153.12, inclusive, relative to applications for Presidential Permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation and importation of natural gas to or from a foreign country in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1953 Supp., p. 106).”

Section 157.13(c) of the Regulations applicable to Applications for a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act, provides:

(c) Interdependent applications. When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently.”

Section 1.5(a) of the Commission Rules of Practice and Procedures provides:

“(a) General. Applications for authorization or permission which the Commission may give under statutory or other delegated authority administered by it, in addition to the requirements prescribed in this part, shall conform to the requirements of the rules and regulations promulgated by the Commission separately under the several statutes and delegations of authority administered by it.”

Thus, the Commission has, by its applicable and extant Rules and Regulations, recognized (1) the requirement in

law for, and its duty to require, an application to be filed under Executive Order No. 10485, by any person or company "contemplating the construction" of facilities to export natural gas, (2) that all interdependent Applications must be filed before acceptance, processing and action upon any one of such Applications, (3) that Applications under Section 3 of the Act and pursuant to Executive Order No. 10485 are interrelated and interdependent, and (4) that compliance must be had with extant substantive and procedural rules.

The Application of Gas Co. and Transportation in Docket No. CP66-105 is, necessarily, interrelated and interdependent with the applications of the other parties. The Regulations proscribe "acceptance" for filing unless such interdependent applications are "filed concurrently."

The requirement for an Application by Southern Union for "construction" of the foreign commerce "facilities" is a substantive legal requirement; it is imposed not only by the Rules and Regulations but also by Executive Order No. 10485. Section 153.10 is a legislative rule, restating requirements imposed by law and must be adhered to. Thus, such filing cannot be waived. These proceedings and the Orders under review involving the "facilities" contemplated to be constructed are a nullity; the necessary application "to construct" has not been filed.

B. Disregard by Respondent for International Relations

Section 3 of the Natural Gas Act and Executive Order No. 10485, necessarily require, as a factor affecting the public interest, consideration of, and respect for the views and concern of the foreign country to which natural gas is proposed to be exported, and good and harmonious relations and cooperation between the neighboring nations of the United States and the Republic of Mexico. There is not one word in the Orders authorizing exportation of natural gas concerning the position of the Republic of

Mexico; nor is there any reference to maintenance or encouragement of good relations between these neighboring countries.

The request of the Ambassador of Mexico to the United States through the Secretary of State, on or about December 8, 1965, that the latter "be good enough to use his good offices" with the Federal Power Commission so that the request of Petitioner for participation in the hearing be granted, which request was appropriately honored by the Secretary of State on or about December 15, 1965, by transmittal of such request to the Federal Power Commission, is not even mentioned.

The letter dated November 26, 1965 from the Department of State to Acting Chairman Black stating that *if* Respondent is able to comply with certain suggestions of the United States Commissioner on the International Boundary and Water Commission, "the Department perceives no foreign policy reason to withhold issuance of the permit" (R. 296) is at most, a conditional acquiescence. This November 26, 1965 letter, transmitted about 13 days prior to the date of the letter from Ambassador Margain to the Secretary of State, provides the basis for the specific finding that "the Secretary of State . . . favorably recommend[s] that the permit be granted . . ." (R. 311).

The request of the Mexican Ambassador unquestionably constitutes a "foreign policy reason to withhold issuance of the permit," and Respondent was made aware of that fact for two weeks prior to the issuance of the subject orders. However, not a single reference was made in any of the several Orders to the formal request by the Ambassador representing the Republic of Mexico to the Secretary of State, and transmittal by the latter to Respondent, that the Petition to Intervene of Juarez Gas Company be granted. The letter of December 29, 1965, by the Special Assistant to the Chairman of the Commission to the State Department (R. 299C) stating that the "Mexican note"

was brought to the attention of the Commission prior to its adoption of the December 28 and 29 Orders makes clear, as does the December 29, 1965 Order in Docket No. CP66-105, that the Ambassador's written request is *not* a part of the evidence of record upon which the Orders were entered. The Order specifically provides that Respondent introduced in evidence all data "in support of the authorizations sought herein" (R. 306). The request of the Ambassador was *not* in support and, therefore, is not a part of the record upon which Respondent's action is, purportedly, based.

Inasmuch as said request of the Ambassador vitally affects and, necessarily, has a direct bearing upon foreign policy and diplomatic relations between the United States and the Republic of Mexico, failure to even note such fact, much less to act in accord with the wishes and desires of the Republic of Mexico, as made known by the Ambassador, demonstrates the arbitrariness and capriciousness of Respondent in adopting the Orders, a gross abuse of discretion, disregard for the wishes of the Republic of Mexico, and disregard for proper international relations and foreign policy matters.

In circumstances far less compelling than those enumerated above for permitting intervention to a foreign entity, Respondent has granted petitions therefor by such entities in recognition of its duty to foster and continue harmonious relations between the United States and its neighboring nations.⁸ Refusal to allow intervention to Petitioner in this case, therefore, was an act in derogation of that duty and consequently a clear abuse of discretion.

⁸ See *e.g.* *Panhandle Eastern Pipe Line Co.*, 5 FPC 472, 474 (1946); *Reynosa Pipe Line Co.*, 5 FPC 130, 132 (1946); *Power Authority of the State of New York*, 13 FPC 172 (1953), affirmed, *Lake Ontario Land Development, etc. v. FPC*, 93 App. D.C. 351, 212 F. 2d 227, 236 (1954).

C. Disregard by Respondent of Violations of Law by Gas Natural and Inability of Gas Natural To Charge Rates Proposed

By letter dated December 18, 1965, from the Chief of the Sanitary Engineering Department of the Mexican Government located in the City of Juarez, request was made to the Director of said Department for a complete stop order against Gas Natural because of failure to comply with the laws, and possible detriment to the health of the public. (R. 370-374).

The violations of law (1) related to evidence of the improbability that Gas Natural will ever secure authorization to use such facilities as have been constructed under preliminary permits only; (2) disprove the prior sworn averments of Del Norte that Gas Natural "has procured" all consents and authority "necessary to permit it to serve" natural gas in Juarez and environs as proposed; and (3) substantiate the averment of Petitioner in its Petition to Intervene, that it is "highly improbable" that all consents will be procured to enable natural gas *service* by Gas Natural as proposed.

The higher rates which Gas Natural proposed to charge, if it does not abandon its project, are questioned by the Mexican authorities. It is apparent that Gas Natural will not be permitted to charge the high rates which had been assumed in the revenue and expense presentation which Gas Co. attached as an exhibit to its Application in Docket No. CP66-105, which exhibit Respondent deemed evidence in these proceedings (R. 84-109).

The probability that Gas Natural will not be permitted to charge the rates upon which representations to Respondent by Gas Co. have been based and that it may abandon its project (a) is indicative of the absence of financial and economic feasibility of the Gas Natural project, which issues of fact Petitioner raised in its Petition to Intervene, thus requiring denial of each interdependent application herein;

(b) reflects fundamental error by reason of failure of Respondent to consider factors fundamental to a finding of public convenience and necessity and of public interest, (c) reflects the consequences of unlawful action of Respondent in denying the Petition to Intervene and refusing to issue proper and due notice and hold a proper hearing to receive material and relevant evidence upon basic issues of fact; and (d) illustrates the consequences of failure of Respondent to perform duties imposed upon it by Congress in the Natural Gas Act and by Executive Order No. 10485.

D. Disregard by Respondent of Violations of Law by Southern

Southern, on or about December 20, 1965, notwithstanding the provisions of Section 3 of the Natural Gas Act, Executive Order No. 10485, and Section 153.10 of the Regulations, did construct international facilities and connect such facilities on the International Border with a pipeline of Gas Natural (R. 353, 384, 386). These border facilities are the subject matter of Docket No. CP66-106 and are fully described as "international facilities" in Article 2 of the Permit issued December 28, 1965 (R. 309-316). Such conduct during pendency of the instant proceedings reflects upon Southern's character and ability as measured under the statutory standards of public interest and public convenience and necessity, and clearly indicates Southern's disregard for law, the rights of others, and the public generally.

Character and ability of an applicant to perform in conformity with law are always factors required to be considered in determining public convenience and necessity and public interest. *Midwestern Gas Transmission Co. v. FPC*, 103 App. D.C. 360, 258 F. 2d 660 (1958); *WKAT, Inc. v. FCC*, 103 App. D.C. 324, 258 F. 2d 418 (1958). Respondent unlawfully has denied Petitioner the opportunity to present of record this and other relevant evidence affecting character and ability of Applicants herein to perform, which facts are prerequisite to granting the several applications.

E. The Non-Public Hearing

Respondent held a non-public hearing on December 22, 1965, without any notice thereof to Petitioner or to the public. Such hearing was held in direct contradiction of the prior public Notice of Applications issued October 28, 1965. Such Notice specifically provided:

"Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 3, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application *if no protest or petition to intervene is filed within the time required herein*, if the Commission on its own review of the matter finds that a grant of the permit, certificates and permission and approval for the proposed abandonment is required by the public convenience and necessity. *If a protest or petition for leave to intervene is timely filed*, or if the Commission on its own motion believes that a formal hearing is required, *further notice of such hearing will be duly given.*" (R. 244, emphasis supplied)

Agency action that substantially and prejudicially violates agency orders cannot stand. Agency action must be judged by the standards of conduct and procedures prescribed by the agency itself. See *Vitarelli v. Seaton*, 359 U.S. 535, 540-4, 546 (1959); *Public Service Commission of New York v. FPC*, 111 App. D.C. 153, 295 F. 2d 140, 144 (1961); *Sangamon Valley Television Corp. v. United States*, 106 App. D.C. 30, 269 F. 2d 221, 224 (1959).

Inasmuch as Petitioner on November 5, 1965, did, in strict and complete compliance with Respondent's Notice of October 28, 1965, timely file its Petition to Intervene in each of the applications noticed therein, action of Respondent taken in direct contradiction and contravention of extant notices, rules and regulations of orders, without notice to interested parties, the public and Petitioner, in particular, and without providing the opportunity to protect

procedural and substantive rights, is arbitrary, capricious, an abuse of discretion and unlawful.

F. Failure of Respondent to Make Basic Findings Required by Law

Respondent has failed to make basic and essential findings upon which its conclusions under Sections 3 and 7(e) of the Act must rest. More specifically, Respondent has not made any findings as to *any* of the several proposals regarding, *inter alia*, adequacy of gas reserves, adequacy of facilities, adequacy of market requirements, economic feasibility, financial feasibility, impact upon existing customers, if any, alternate sources of supply, effect upon international relations, reasonableness of proposed contractual provisions, or compliance with extant status rules and regulations and Executive Order No. 10485. In each Order under review, Respondent has merely summarized the averments of the respective Applications and perfunctorily recited statutory language. The predicate of such ultimate conclusions are not made known to this reviewing Court as required by Sections 3 and 7(e). As stated by this Court in *Guam v. Federal Maritime Commission*, 117 App. D.C. 296, 329 F. 2d 251, 255 (1964), "The reviewing court is entitled to know—indeed must know—the basic data and the whys and wherefores of the Commission's conclusions."⁹ What factors, if any, Respondent considered in stating the conclusions of public convenience and necessity and public interest cannot be determined since none are mentioned. *Cf. Michigan Consolidated Gas Co. v. FPC*, 108 App. D.C. 409, 283 F. 2d 204, 214, 218 (1960). Respondent gives no explanation of the circumstances which are held to justify its ultimate conclusions, and these mere assertions by Respondent are insufficient. *State Corporation Commission of Kansas v. FPC*, 206 F. 2d 690, 723 (8th Cir. 1953).

⁹ See also *SEC v. Chenery Corp.*, 332 U.S. 194, 196-197 (1947); *ICC v. J-T Transport Co.*, 368 U.S. 81, 93 (1961); *Eastern-Central Motor Carriers Ass'n. v. United States*, 321 U.S. 194, 211-212 (1944).

CONCLUSION

For the reasons stated, Respondent has erred in denying intervention to Petitioner, and in granting the interdependent Applications. The Orders under review must, therefore, be set aside and the record remanded to Respondent with directions to allow Petitioner to participate in the remanded proceedings as a party intervenor.

Respectfully submitted,

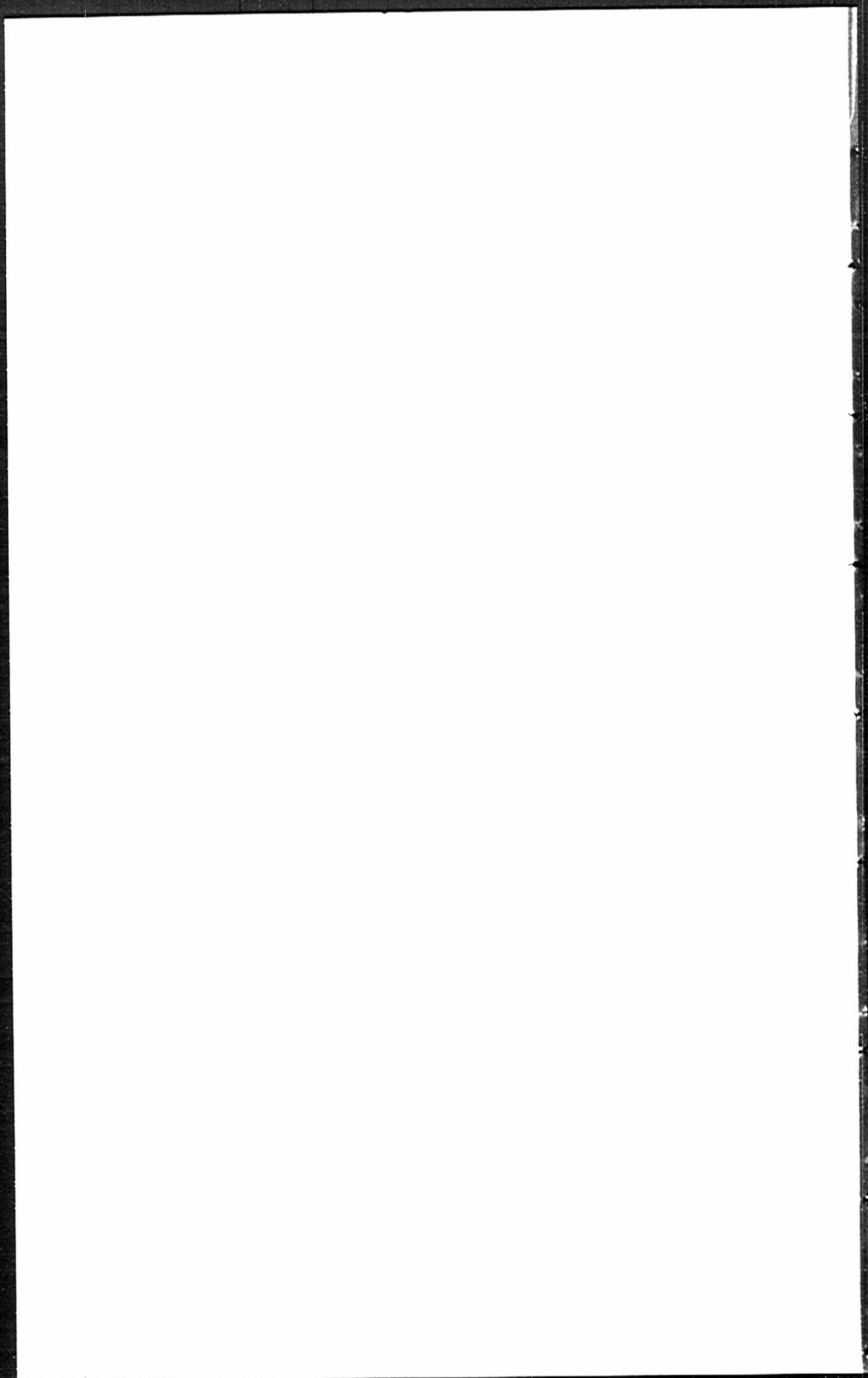
WILLIAM J. GROVE
PHILIP R. EHRENKRANZ
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Attorneys for Petitioner

Of Counsel:

GROVE, JASKIEWICZ, GILLIAM
AND PUTBRESE
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Dated: July 5, 1966



APPENDIX

Provisions of the Natural Gas Act

SECTION 3:

EXPORTATION OR IMPORTATION OF NATURAL GAS

SEC. 3. After six months from the date on which this act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate. [52 Stat. 822 (1938); 15 U. S. C. § 717b]

SECTION 7:

EXTENSION OF FACILITIES; ABANDONMENT OF SERVICE

* * *

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment. [52 Stat. 824 (1938); 15 U. S. C. § 717f (b)]

(c) No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the re-

quirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest. [52 Stat. 825 (1938), as amended 56 Stat. 83 (1942); 15 U.S.C. § 717f (c)]

* * *

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require. [56 Stat. 84 (1942); 15 U. S. C. § 717f (e)]

SECTION 15:

HEARINGS; RULES OF PROCEDURE

SEC. 15. (a) Hearings under this act may be held before the Commission, any member or members thereof, or any representative of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before it, the Commission in accordance with such rules and regulations as it may prescribe, may admit as a party any interested State, State commission, municipality or any representative of interested consumers or security holders, or any competitor of a

party to such proceeding, or any other person whose participation in the proceeding may be in the public interest.

SECTION 19:

REHEARING ; COURT REVIEW OF ORDERS

SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this Act.

(b) Any party to a proceeding under this act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States¹⁰ for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the

application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in [former] sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, sec. 1254).

Rules of Practice and Procedure under the Natural Gas Act**SECTION 1.5:****§ 1.5 Applications.**

(a) *General.* Applications for authorization or permission which the Commission may give under statutory or other delegated authority administered by it, in addition to the requirements prescribed in this part, shall conform to the requirements of the rules and regulations promulgated by the Commission separately under the several statutes and delegations of authority administered by it. (See Subchapters B and E of this chapter.)

* * *

SECTION 1.8:**§ 1.8 Intervention.**

(a) *Initiation of intervention.* Participation in a proceeding as an intervenor may be initiated as follows:

(1) By the filing of a notice of intervention by a State Commission, including any regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy, or natural gas, as the case may be, to consumers within the intervening State or municipality.

(2) By order of the Commission upon petition to intervene.

(b) *Who may petition.* A petition to intervene may be filed by any person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. Such right or interest may be:

(1) A right conferred by statute of the United States;

(2) An interest which may be directly affected and which is not adequately represented by existing parties and as to which petitioners may be bound by the Commission's action in the proceeding (the following may have such an interest: consumers served by the applicant, defendant, or respondent; holders of securities of the applicant, defendant, or respondent; and competitors of the applicant, defendant, or respondent).

(3) Any other interest of such nature that petitioner's participation may be in the public interest.

(c) *Form and contents of petitions.* Petitions to intervene shall set out clearly and concisely the facts from which the nature of the petitioner's alleged right or interest can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding, so as fully and completely to advise the parties and the Commission as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the proceeding, and citing by appropriate reference the statutory provisions or other authority relied on: *Provided*, That where the purpose of the proposed intervention is to obtain an allocation of natural gas for sale and distribution by a person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, the petition shall comply with the requirements of Part 156 of this chapter (i.e., Regulations Under the Natural Gas Act). Such petitions shall in other respects comply with the requirements of §§ 1.15 to 1.17, inclusive.

(d) *Filing and service of petitions.* Petitions to intervene and notices of intervention may be filed at any time following the filing of a notice of rate or tariff change, or of an application, petition, complaint, or other document

seeking Commission action, but in no event later than the date fixed for the filing of petitions to intervene in any order or notice with respect to the proceedings issued by the Commission or its Secretary, unless, in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Service shall be made as provided in § 1.17. Where a person has been permitted to intervene notwithstanding his failure to file his petition within the time prescribed in this paragraph, the Commission or officer designated to preside may, where the circumstances warrant, permit the waiver of the requirements of § 1.26(c) (5) with respect to copies of exhibits for such intervenor.

(c) *Answers to petitions.* Any party to the proceeding or staff counsel may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived any objection to the granting of such petition. If made, answers shall be filed within 10 days after the date of service of the petition, but not later than 5 days prior to the date set for the commencement of the hearing, if any, unless for cause the Commission with or without motion shall prescribe a different time. They shall in all other respects conform to the requirements of §§ 1.15 to 1.17, inclusive.

(f) *Notice and action on petitions* — (1) *Notice and service.* Petitions to intervene, when tendered to the Commission for filing, shall show service thereof upon all participants to the proceeding in conformity with § 1.17(b).

(2) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to such petitions or default thereof, as provided in paragraph (e) of this section, the Commission will grant or deny such petition in whole or in part or may, if found to be appropriate, authorize limited participation. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission after opportunity for all parties to object thereto. Only to avoid detriment to the

public interest will any presiding officer tentatively permit participation in a hearing in advance of, and then only subject to, the granting by the Commission of a petition to intervene.

(g) *Limitation in hearings.* Where there are two or more interveners having substantially like interests and positions, the Commission or presiding officer may, in order to expedite the hearing, arrange appropriate limitations on the number of attorneys who will be permitted to cross-examine and make and argue motions and objections on behalf of such interveners.

[Order 141, 12 F.R. 8474, Dec. 19, 1947, as amended by Order 217, 24 F.R. 9471, Nov. 25, 1959; Order 251, 27 F.R. 5766, June 19, 1962]

SECTION 1.32:

§ 1.32 Shortened procedures.

(a) *Where hearing waived.* In any proceeding in which the Commission is authorized to act after opportunity for hearing, if the parties waive hearing, such opportunity shall be deemed to have been afforded by service or publication in the Federal Register of notice of the application or other initial pleading, request, or other filing, such notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or petition. Upon the expiration of such period of time, in the absence of a request for hearing, the Commission may forthwith dispose of the matter upon the basis of the pleadings and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in its pleadings shall be deemed to have waived a hearing for the purpose of such disposition, but shall not be bound by such waiver for the purposes of any application for rehearing with respect to an order so entered.

(b) *Noncontested proceedings.* In any proceeding required by statute to be set for hearing, the Commission when it appears to be in the public interest and to the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may after a hearing during which no opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record; *Provided*, (1) the applicant or initial pleader requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (2) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the Federal Register of the notice of the filing of an initial pleading and notice or order fixing date of hearing, which notice or order shall state that the Commission considers the proceeding a proper one for disposition under the provisions of this section, and shall otherwise conform with the requirements of § 1.19. Requests for the procedure provided by this section may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after noncontested hearing, will be final, subject to reconsideration by the Commission upon application for rehearing as provided by statute.

[Order 141, 12 F.R. 8482, Dec. 19, 1947]

SECTION 1.34:

§ 1.34 Application for rehearing.

(a) *Form, filing, and service.* An application for rehearing of a proceeding may be filed within 30 days after the issuance of any final decision or order by the Commission. Such application shall be made by petition, under oath, stating specifically the grounds relied upon, shall be filed with the Commission and served by the petitioner upon all

parties to the proceeding or their attorneys of record, and shall in all other respects conform to the requirements of §§ 1.7 and 1.15 to 1.17, inclusive.

(b) *Specification of errors.* Such petitions for rehearing shall state concisely the alleged errors in the Commission decision or order. If an order of the Commission is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(c) *Action on.* Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application shall be deemed to have been denied.

(d) *Response.* No answers to petitions for rehearing will be entertained by the Commission. If, and to the extent, however that rehearing is granted by the Commission, a response in the nature of an answer may be filed by any party or staff counsel within 15 days after the issuance of the order granting rehearing. Such response shall be confined to the issues upon which rehearing has been granted, and shall be served by the proponent upon all parties to the proceeding or their attorneys of record. All such responses shall in all other respects conform to the requirements of §§ 1.15 to 1.17, inclusive.

[Order 141, 12 F.R. 8483, Dec. 19, 1947, as amended by Order 175, 19 F.R. 5213, Aug. 18, 1954; Order 251, 27 F.R. 5766, June 19, 1962]

Regulations under the Natural Gas Act**PART 153—APPLICATION FOR AUTHORIZATION TO EXPORT
OR IMPORT NATURAL GAS****§ 153.1 Who shall apply.**

(a) Any person proposing to export natural gas from the United States to a foreign country or to import natural gas from a foreign country, pursuant to the provisions of section 3 of the Natural Gas Act, shall make an application for authorization therefor under this part.

(b) In connection with applications under this section, attention is directed to the provisions of §§ 153.10 to 153.12, inclusive, relative to applications for Presidential Permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation and importation of natural gas to or from a foreign country in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1953 Supp., p. 106).

[Order 141, 12 F.R. 8461, Dec. 19, 1947; as amended by Order 160, 16 F.R. 6751, July 12, 1951]

NOTE: Executive Order No. 8202 was revoked and superseded by Executive Order No. 10485, Sept. 3, 1953, 18 F.R. 5397; 3 CFR, 1949—1953 Comp., p. 970.

§ 153.2 Form and time of filing; number of copies.

An original and 7 conformed copies of an application under this part shall be furnished to the Commission and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter. The Commission reserves the right to request additional copies. Such application shall be made at least 30 days in advance of the proposed exportation or importation, except where otherwise ordered by the Commission for good cause shown.

[Order 141, 12 F.R. 8461, Dec. 19, 1947; as amended by Order 196, 22 F.R. 2881, Apr. 24, 1957]

§ 153.3 Contents of application.

Every application shall set forth in the order indicated the following:

- (a) The exact legal name of applicant;
- (b) The name, title, and post office address of the person to whom correspondence in regard to the application shall be addressed;
- (c) If a corporation, the State or Territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in more than one State, all pertinent facts should be stated;
- (d) A statement giving the name and location of the field or fields in which the gas proposed to be exported or imported is produced and the most recent estimate of the remaining natural-gas reserves in such field or fields;
- (e) If the application is for authority to export natural gas, state the name of the purchaser of the gas proposed to be exported, its proposed use in the foreign country, and the rate or rates proposed to be charged the purchaser for such gas, together with the rate or rates charged by the applicant for similar service, if rendered in the United States;
- (f) If the application is for authority to import natural gas, state the name of the seller and of the producer of the gas proposed to be imported, and the rate or rates proposed to be paid by the applicant for the said gas;
- (g) A description of the facilities utilized in the proposed exportation or the importation of natural gas;
- (h) A statement of the reasons why the proposed exportation or importation of natural gas (1) will not be

inconsistent with the public interest and (2) will not in any way impair the ability of applicant to render natural gas service at reasonable rates to its customers in the United States.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.4 Required exhibits.

(a) There shall be filed with the application and as a part thereof the following exhibits:

Exhibit A. Photostatic or certified copy of articles of incorporation and by-laws of applicant company.

Exhibit B. A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

Exhibit C. Statement, including signed opinion of counsel, showing that the exportation or the importation of natural gas is within the corporate powers of applicant, and that applicant has complied with State laws and with the rules and regulations of State regulatory authorities in the State or States in which applicant operates;

Exhibit D. If the application is for authority to export natural gas, copy of the contract or contracts with purchasers in the foreign country of the natural gas proposed to be exported by applicant;

Exhibit E. If the application is for authority to import natural gas, copy of the contract or contracts with the producer or seller in the foreign country of the natural gas proposed to be imported;

Exhibit F. A general or key map on a scale not greater than 20 miles to the inch, showing the physical location of the facilities utilized in the applicant's proposed export or import operations. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and the foreign country.

(b) Any exhibit required by this section already on file with the Commission may be incorporated by reference.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.5 Other information.

The applicant shall furnish such additional information as the Commission may deem pertinent.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.6 Transferability.

(a) Authorizations to export natural gas from the United States to a foreign country or to import natural gas from a foreign country granted by order of the Commission under §§ 153.1 to 153.5 inclusive pursuant to section 3 of the Natural Gas Act shall not be transferable or assignable. The Commission order granting the authorization may, however, provide that the authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to sufficiency of supply, rates, and nature of use remain substantially the same as before the transfer and as stated in the initial application for such authorization.

(b) The Commission may also, at any time subsequent to the original order of authorization, from time to time, after opportunity for hearing, make such supplemental orders in the premises as it may find necessary or appropriate.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.7 Authorization not exclusive.

No authorization granted pursuant to section 3 of the Natural Gas Act shall be deemed to prevent authorization being granted to any other person to export natural gas from the United States to a foreign country or to import natural gas from a foreign country for the same use, or to prevent any other person from making application for such authorization.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.8 Filing of contracts, rate schedules, etc.

Persons authorized to export natural gas from the United States to a foreign country or to import natural gas from a foreign country shall file two full and complete copies of every contract and the amendments thereto, presently or hereafter effective, for such export or import, together with all rate schedules, agreements, leases or other writings, tariffs, classifications, rules and regulations relative to such export or import in the manner specified in Part 154 of this chapter, except that the requirements of § 154.31 through § 154.41 shall not be applicable.

[Order 141, 12 F.R. 8461, Dec. 19, 1947; as amended by Order 144, 13 F.R. 6371, Oct. 30, 1948; 13 F.R. 6838, Nov. 20, 1948]

APPLICATION FOR CONSTRUCTION, OPERATION, MAINTENANCE,
OR CONNECTION AT INTERNATIONAL BOUNDARY, OF FACILITIES
FOR EXPORTATION OR IMPORTATION OF NATURAL GAS.

§ 153.10 Who shall apply.

Any person, firm, or corporation contemplating the construction of, or who is operating or maintaining facilities at the borders of the United States, for the exportation or the importation of natural gas to or from a foreign

country, shall file with the Commission an application for a Presidential Permit, in compliance with Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1953 Supp., p. 106).

In connection with applications hereunder, attention is directed to the provisions of §§ 153.1 to 153.5, inclusive, relative to applications for authorization to export or import natural gas to or from a foreign country under section 3 of the Natural Gas Act.

NOTE: Executive Order No. 8202 was revoked and superseded by Executive Order No. 10485, Sept. 3, 1953, 18 F.R. 5397; 3 CFR, 1949—1953 Comp., p. 970.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

§ 153.11 Contents of application; number of copies.

An original and 9 conformed copies of an application under this section shall be furnished to the Commission and shall conform in all other respects with §§ 1.15 and 1.16 of this chapter. The Commission reserves the right to request additional copies. Every application shall set forth in the order indicated, the following:

(a) Information regarding applicant:

(1) The exact legal name of applicant;

(2) The name, title, and post office address of the person to whom correspondence in regard to the application shall be addressed;

(3) If applicant is a corporation: Copy of articles of incorporation and bylaws; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(4) Is applicant company, or its transmission lines, owned wholly or in part by any foreign government or directly, or indirectly subventioned by any foreign govern-

ment; or, has applicant company any understanding for such ownership or by subvention from any foreign government; if so give full details.

(b) A general or key map on a scale not greater than 20 miles to the inch, showing the physical location and giving a full description of the facilities employed, or to be employed in the exportation or importation of natural gas at the international boundary. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and the foreign country.

(c) Statement describing every existing contract that applicant has with a foreign government, or private concerns, which in any way relate to the control or fixing of rates for the purchase, sale or transportation of natural gas and which may serve in any way to restrict or prevent competing American companies from extending their activities; also, attach certified copies of such contracts.

(d) Copies of every landing license, or permit, which has been granted applicant, or any predecessor, by a foreign government or by any of its agencies, in connection with the exportation or importation of natural gas.

[Order 141, 12 F.R. 8596, Dec. 19, 1947, as amended by Order 196, 22 F.R. 2882, Apr. 24, 1957]

§ 153.12 Other information.

The applicant shall furnish such additional information, in connection with the application, as the Commission may deem pertinent.

[Order 141, 12 F.R. 8461, Dec. 19, 1947]

PART 157:

Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, as Amended, Concerning Any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment.

§ 157.5 Purpose and intent of rules.

* * *

(b) Every requirement of this part shall be considered as a forthright obligation of the applicant which can only be avoided by a definite and positive showing that the information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application.

(c) This part will be strictly applied to all applications as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information rests with the applicant.

[Order 141, 12 F.R. 8461, Dec. 19, 1947; as amended by Order 163, 17 F.R. 7385, Aug. 14, 1952; Order 280, 29 F.R. 4875, Apr. 7, 1964]

* * *

§ 157.13 Form of exhibits to be attached to applications.

* * *

(c) *Interdependent applications.* When an application considered alone is incomplete and depends vitally upon information in another application, it will not be accepted for filing until the supporting application has been filed. When applications are interdependent, they shall be filed concurrently.

Executive Order 10485:

Providing for the Performance of Certain Functions Heretofore Performed by the President with Respect to Electric Power and Natural Gas Facilities Located on the Borders of the United States

WHEREAS section 202(e) of the Federal Power Act, as amended, 49 Stat. 847 (16 U.S.C. 824a (e)), requires any person desiring to transmit any electric energy from the United States to a foreign country to obtain an order of the Federal Power Commission authorizing it to do so; and

WHEREAS section 3 of the Natural Gas Act, 52 Stat. 822 (15 U.S.C. 717b), requires any person desiring to export any natural gas from the United States to a foreign country or to import any natural gas from a foreign country to the United States to obtain an order from the Federal Power Commission authorizing it to do so; and

WHEREAS the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States, of facilities for the exportation or importation of electric energy and natural gas; and

WHEREAS it is desirable to provide a systematic method in connection with the issuance and signing of permits for such purposes:

Now, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Federal Power Commission is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the

borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation and importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Commission shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Federal Power Commission, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Commission shall submit to the President for approval or disapproval the application for a permit with the respective views of the Commission, the Secretary of State and the Secretary of Defense.

SEC. 2. The Chairman or Acting Chairman of the Federal Power Commission is hereby designated and empowered to sign any permits issued by the Federal Power Commission pursuant to section 1(a)(3) hereof.

SEC. 3. The Federal Power Commission is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in

REPLY BRIEF FOR PETITIONER

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

WILLIAM J. GROVE
PHILIP R. EHRENKRANZ
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005
Attorneys for Petitioner

Of Counsel:

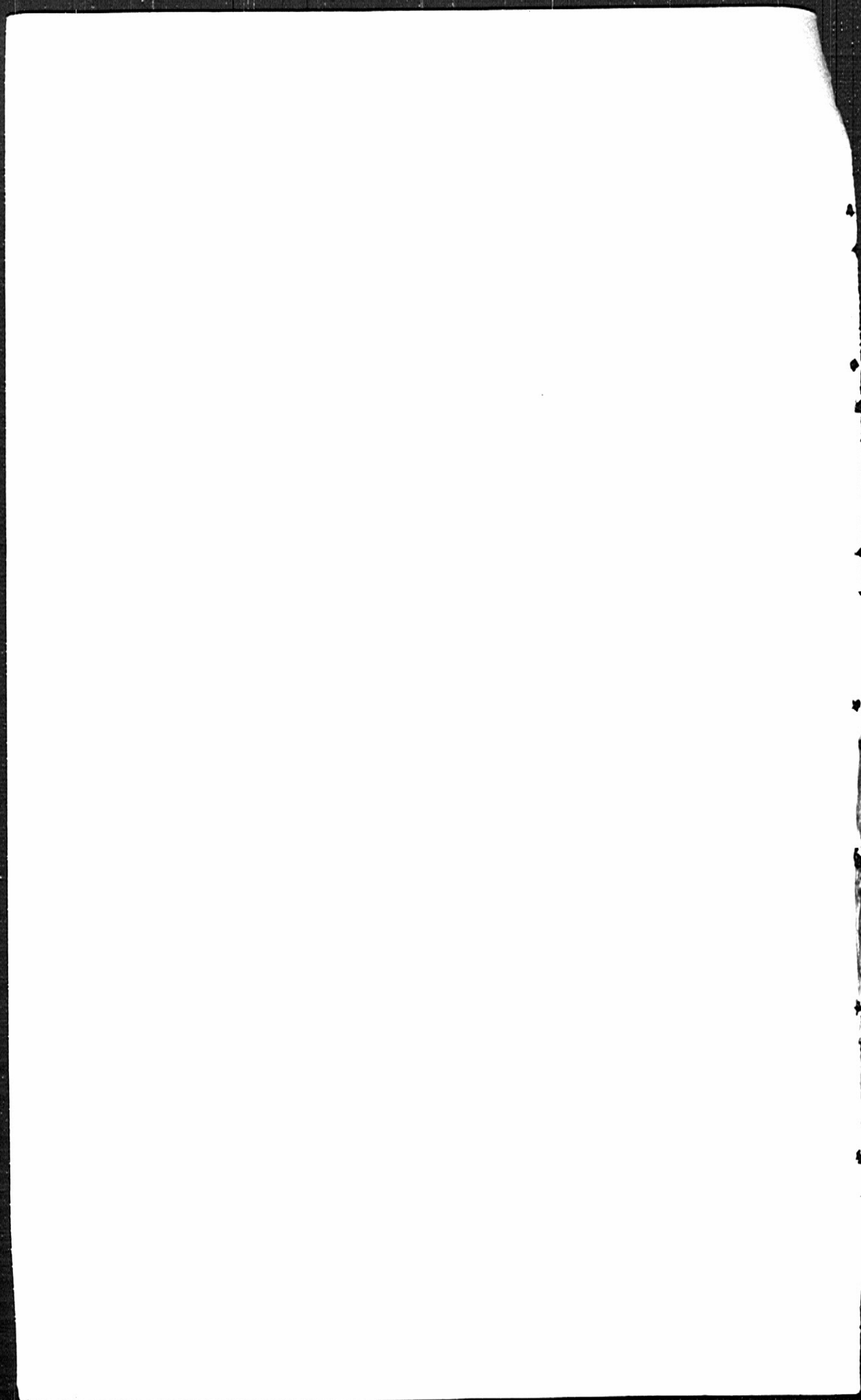
GROVE, JASKIEWICZ, GILLIAM
AND PUTBRESE
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

September 19, 1966

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 19 1966

Nathan J. Paulson
CLERK



INDEX

	Page
INTRODUCTORY STATEMENT	1
ARGUMENT	2
I. The Order Denying Intervention Must Be Reversed Since This Court Is Powerless to Affirm upon the Ground Invoked by the Commission .	2
II. Petitioner Is an "Aggrieved" Party Entitled to Intervene	3
III. The Commission Unlawfully Refused to Consider Substantive Issues Raised By Petitioner	5
CONCLUSION	10

TABLE OF AUTHORITIES

CASES:

<i>Alston Coal Co. v. FPC</i> , 137 F. 2d 740 (10th Cir. 1943)	5
<i>American Louisiana Pipe Line Co., et al.</i> , 30 FPC 698 (1963)	6
<i>Berko v. SEC</i> , 297 F. 2d 116 (2nd Cir. 1961)	3
<i>Blue Ridge Gas Co.</i> , 19 FPC 1120 (1958)	2
<i>Border Pipe Line Co. v. FPC</i> , 84 U.S. App. D.C. 142, 171 F. 2d 149 (1948)	8-9
<i>Central Illinois Public Service Co. v. FPC</i> , 338 F. 2d 682 (7th Cir. 1964)	6-7
<i>Clarksburg-Columbus Short-Route Bridge Co. v. Woodring</i> , 67 App. D.C. 44, 89 F. 2d 788 (1937)	4
<i>Greenville Television Co. v. FCC</i> , 95 App. D.C. 314, 221 F. 2d 870 (1955)	4
<i>Kahn v. SEC</i> , 297 F. 2d 112 (2nd Cir. 1961)	3
<i>Mississippi River Fuel Corp.</i> , 9 FPC 198 (1950)	10
<i>Montana-Dakota Utilities Co.</i> , 8 FPC 409 (1949)	10
<i>Office of Communications of United Church of Christ v. FCC</i> , App. D.C. , 359 F. 2d 994 (1966).	5, 6
<i>Scenic Hudson Preservation Conference v. FPC</i> , 354 F. 2d 608 (2nd Cir. 1965)	5, 6
<i>SEC v. Chenery Corp.</i> , 332 U.S. 194 (1947)	3

	Page
<i>Virginia Petroleum Jobbers Ass'n v. FPC</i> , 104 App. D.C. 106, 259 F. 2d 921 (1958)	2, 3
<i>Wentz v. U. S.</i> , 244 F. 2d 172 (9th Cir. 1957)	8

STATUTES:

Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. § 717, <i>et seq.</i>	
Section 3	5, 8, 9
Section 7	5, 8, 9
Section 15(a)	2, 5
Section 19(b)	1
Executive Order No. 10485	5

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

REPLY BRIEF FOR PETITIONER

INTRODUCTORY STATEMENT

In reply to Respondent Federal Power Commission and Intervenors Del Norte Natural Gas Company and Southern Union Gas Company, Petitioner limits its response to demonstrating (1) that the Order under review cannot be upheld on the grounds upon which it rests, (2) that Petitioner is "aggrieved" within the meaning of Section 19(b) of the Natural Gas Act, and (3) that the Commission wrongly refused to determine issues which it was required to consider.

ARGUMENT

I. The Order Denying Intervention Must Be Reversed Since This Court Is Powerless to Affirm Upon the Ground Invoked by the Commission

Both Respondent and Intervenor misconstrue the full thrust of Petitioner's reliance upon *Virginia Petroleum Jobbers Ass'n. v. FPC*, 104 App. D.C. 106, 259 F. 2d 921 (1958). In the proceeding before the Commission (*Blue Ridge Gas Co.*, 19 FPC 1120 (1958)), the Commission denied intervention to the Jobbers Association on the ground that the Commission did not have the power to resolve a question which the local Commission was competent to decide, i.e., a question concerning "primarily matters pertaining to the local distribution of natural gas" (19 FPC at 1121). The Commission took this position even though the Jobbers Association had an interest competitive to that of Blue Ridge Gas Co.

In reversing such denial of intervention, this Court recognized that in view of the competitive situation, it was *immaterial* that questions pertaining to local distribution rights also were involved (259 F. 2d at 296). Thus, the denial of intervention to Petitioner in the instant case is based upon the identical predicate which this Court rejected in *Virginia Petroleum Jobbers, supra* (R. 301-302). This predicate—that if issues are raised which require resolution of local distribution rights, then the Commission must disregard the fact that the would-be intervenor is a competitor within the meaning of § 15(a) of the Natural Gas Act—must, as a matter of law, provide the basis of review by this Court of the legality of the order denying intervention to Petitioner.¹

It is well settled that, unlike a decision of a trial court, the validity of a determination of an administrative agency must be sustained, if it is to be sustained at all, strictly

¹ Cf. Resp. Br. p. 9

upon the ground which the agency itself invoked. As stated in *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947):

"[The] simple but fundamental rule of administrative law . . . is to the effect that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency. If those grounds are inadequate or improper, the court is powerless to affirm the administrative action by substituting what it considers to be a more adequate or proper basis."²

Inasmuch as this Court rejected in *Virginia Petroleum Jobbers* the very ground upon which Petitioner herein was denied intervention, this Court is now powerless to affirm the order under review.

II. Petitioner Is an "Aggrieved" Party Entitled to Intervene

Although Respondent concedes that Petitioner is aggrieved,³ Intervenors contest such status through factual misconceptions and misconstruction of inapplicable legal propositions.⁴

Intervenors argue that Petitioner is not aggrieved competitively because "there are no overlapping service areas" (Intv. Br. pp. 7, 15-16, 18). In so stating, Intervenors disregard the significant distinction between "service areas" and "franchise areas." While a service area may be limited to the area actually served with natural gas, a franchise area comprehends the area which a natural gas distributor is *entitled* to serve. In this regard, there *are*

² Accord: *Kahn v. SEC*, 297 F. 2d 112 (2nd Cir. 1961); *Berko v. SEC*, 297 F. 2d 116 (2nd Cir. 1961)

³ See Resp. Br., Counterstatement of Question Presented, and pp. 8, 9, 10, 11.

⁴ As noted above, Respondent's Order was not predicated upon lack of aggrievement, and Respondent has never stated that Petitioner is not "aggrieved."

overlapping franchise areas. More specifically, the franchise area of Gas Natural is superimposed upon the franchise area of Petitioner, since the latter encompasses the entire City of Juarez and environs, as granted by the Mexican Department of National Economy on October 25, 1944, Matter No. 2434. This concession has neither been revoked nor modified in any respect material here. It is pursuant to such franchise that Petitioner predicated its plans for expansion now thwarted by the intrusion of Gas Natural into Petitioner's franchise area. Such a franchise invasion, far from being "possible future competition" as alleged by Intervenor (Br. p. 16), constitutes present competition from which ensue serious adverse economic effects upon Petitioner. The comprehensive franchise accordingly invests Petitioner with an interest entitled to the protection of participation in a hearing proceeding upon a competitive interest. As stated by this Court in *Clarksburg-Columbus Short-Route Bridge Co. v. Woodring*, 67 App. D.C. 44, 89 F. 2d 788, 791 (1937):

"In the present situation, considering the sharp competitive conditions existing between the two companies here involved, it was impossible for the Secretary to arrive at a decision . . . in the absence of complete and full testimony as to all the conditions bearing upon the rights of these respective parties."

In *Greenville Television Co. v. FCC*, 95 App. D.C. 314, 221 F. 2d 870 (1955), this Court held that a television licensee was entitled to participate in a proceeding involving the change in transmitter site of a competitor licensee upon the allegation by the former that its competitor's popularity would increase because the site change would enable the competing station to secure a network affiliation which, in turn, probably would result in a decrease in advertising revenues to the intervenor. Such adverse competitive effects are far more speculative than those now being experienced by Petitioner. Accordingly, Petitioner's right to intervene has been denied wrongfully.

III. The Commission Unlawfully Refused to Consider Substantive Issues Raised by Petitioner

Respondent, while recognizing Petitioner's aggrievement, contends that Petitioner failed to make a showing that "the issues on which it seeks to be heard are issues that the Commission properly should consider," and that such was the "basis for not permitting it to intervene" (Resp. Br. p. 9). To the contrary, Petitioner has demonstrated above that the basis invoked by the Commission for denying intervention is *not* legally sustainable. Petitioner takes issue, however, with Respondent's interpretation of the import of Section 15(a).

Cases cited by Respondent to buttress its position are inapposite. *Alston Coal Co. v. FPC*, 137 F. 2d 740 (10th Cir. 1943), *Scenic Hudson Preservation Conference v. FPC*, 354 F. 2d 608 (2nd Cir. 1965), and *Office of Communications of United Church of Christ v. FCC*, App. D.C. , 359 F. 2d 994, (1966), do not support Respondent's assertion of discretionary power to deny intervention to a person as to whom aggrievement is conceded.

Alston held only that the effect of a gas rate upon a competing fuel is not a factor which Respondent may consider in a proceeding for establishment of a gas rate. The Court stated (137 F. 2d at 742):

"Nowhere in the Act is there a suggestion which would justify the Commission in fixing higher rates in order to prevent economic injury to competing fuel."

In the instant *certificate* proceedings, however, which involve interrelated and interdependent Section 7(c) and (e), Section 3, and Executive Order No. 10485 applications, the Commission was under a duty to consider the overall economic and financial feasibility of such proposal and Petitioner, as fully demonstrated, had a right to intervene to show the adverse effect upon interstate and foreign commerce of the granting of such applications.

Scenic Hudson held, 354 F. 2d at 617, that Respondent had "ample authority . . . to limit those eligible to intervene," but that at least one eligible party acting as a private attorney general, "can raise issues not personal to it." (354 F. 2d at 619)

Office of Communications held (359 F. 2d at 1005-6), as did *Scenic Hudson*, that Respondent has broad discretion in determining which and how many of those persons eligible should be permitted to participate, but that, of those eligible, it "must allow standing to one or more of them as responsible representatives to assert and prove the claims they have urged in their petition."

The situation confronting the respective courts in *Scenic Hudson* and *Office of Communications*, namely potential procedural problems which a multiplicity of intervenors would cause, is not here present. Furthermore, these decisions confirm the illegality of the denial of intervention to Petitioner, since Petitioner raised substantial issues affecting the public interest which the Commission was obligated to consider and resolve.

Issues involving franchise areas are properly considered by the Commission in cases of this nature, and such was recognized in *Central Illinois Public Service Co. v. FPC*, 338 F. 2d 682 (7th Cir. 1964). That case involved a dispute between Central Illinois and the Cities of Bushnell and Milford, Illinois. Central Illinois requested an allocation of gas from Panhandle Eastern Pipe Line Co. for resale to Bushnell, but Bushnell desired to be served directly by Panhandle. Milford sought to buy gas directly from Trunkline Gas Co. The Commission denied Central Illinois' request.⁵ In affirming, the court referred to the facts considered by the Commission and to the Commission's "weighing of the conflicting considerations" (338 F. 2d at 682), and stated with respect to Bushnell that

⁵ *American Louisiana Pipe Line Co., et al.*, 30 FPC 698 (1963)

"Petitioner has no franchise to distribute gas in Bushnell" (338 F. 2d at 686), and in regard to Milford that "[f]or thirty years, petitioner had a franchise in Milford, but never attempted to exercise that franchise." (338 F. 2d at 686). What also is significant is that in the proceedings before the Commission, Bushnell and Milford were permitted to intervene to protect the interests of their respective municipal gas distribution systems (essentially franchise areas) against the proposal of Central Illinois which would have supplanted the allocations which Bushnell and Milford requested.

Respondent characterizes Petitioner's "principal position" as contending "that the proposed new gas distributor would be unable to obtain requisite Mexican authorizations" (Resp. Br. p. 8), and that "[t]he focus of the petition to intervene is confirmed in its further allegation that the new company was a 'purely paper company' with no experience in gas distribution . . ." (Resp. Br. p. 13). Respondent also contends (Br. p. 13) that in relation thereto, Petitioner did not question "Del Norte's and Gas Natural's proposed market and the basis for the market estimates." Nothing could be further from the truth. In its Petition to Intervene, Petitioner stated:

"The several Applications are deficient as a matter of fact and law in that (a) no showing has been made or attempted to be made of the ability of Gas Natural *to receive and dispose of, through sale or use, the 15,000 Mcf per day proposed by Del Norte to be exported* nor, as the necessary consequence of such deficiency, the necessity for construction and operation of facilities to enable the exportation of such volumes of natural gas from the United States . . ." (R. 248-249, emphasis supplied).

Moreover, the challenged ability of Gas Natural referred to in the Petition to Intervene necessarily reflects upon and challenges as fact the economic and financial feasibility of the entire project presented by the inter-

related Section 7 and Section 3 applications. These issues of feasibility are not only appropriate for Commission consideration, they are *required* to be considered. An anomalous situation is thus presented: Respondent contends that Petitioner should have challenged economic feasibility of the interrelated applications, and Intervenor, citing *Border Pipe Line Co. v. FPC*, 84 U.S. App. D.C. 142, 171 F. 2d 149 (1948), argue that evaluation of such a challenge is not within the Commission's jurisdiction (Intv. Br. pp. 18-19, 23). As shown above, Respondent is in error because Petitioner did challenge economic and financial feasibility in the first pleading which it filed with the Commission. Intervenor's citation of the *Border Pipe Line* case is misplaced, for, unlike the project which Petitioner has challenged, in *Border* an application under § 7 was not involved, since in contrast to the facts here, gas flowing in interstate commerce was not proposed to be exported.

In *Border*, the gas to be exported to Mexico was produced in Texas, and was not commingled with any gas destined for resale in interstate commerce. The *Border* case thus was distinguished from a situation involving a flow of gas across state lines, as the domestic supplier and transporter, El Paso Natural Gas Company and El Paso Transportation Corporation, sells and transports such interstate gas here. In *Wentz v. U. S.*, 244 F. 2d 172 (9th Cir. 1957), the Court, in referring to *Border*, stated:

"... we do not read that case as reaching the question that would have arisen if the gas had flowed from Texas to New Mexico and thence across to Mexico."
(244 F. 2d at 176)

Further ignoring the interrelated applications under Sections 3 and 7, Intervenor would lead this Court to believe that involved below was a proceeding solely under Section 3 (Resp. Br. pp. 29-30). Thus, Intervenor quote from *Border* to the effect that the Commission's jurisdic-

tion in a pure export proceeding is "more narrowly circumscribed than under Section 7 of the Act" (Intv. Br. pp. 12-13). At the same time, Intervenor's recognize that "[o]f course the four applications by Gas Company, Transportation, Del Norte, and Southern [under Sections 3 and 7] are interrelated" (Intv. Br. p. 29). But inconsistently, in *this* connection Intervenor's disregard the qualification stated by this Court in *Border*, that:

"Of course, if a company be in both interstate *and* foreign commerce, one might burden the other and so produce the result which the burden of intrastate on interstate commerce causes. But we do not have that situation here. The operation before us is *wholly local*. . . ." (171 F. 2d at 151, emphasis supplied)

In the present case, Petitioner submits that the interrelated and interdependent applications present a comprehensive project under Sections 3 and 7 of the Act tantamount to the "company" referred to in *Border* as being in "both interstate and foreign commerce." The "burden" upon interstate commerce to which reference is made in *Border* also is apparent in this case, for in a proper hearing Respondent is obliged to consider the economic and financial feasibility of the project as proposed under Sections 3 and 7. It is not to be doubted that an uneconomic project imposes an obvious "burden" on interstate commerce, but it is only through Petitioner's participation in an evidentiary hearing that the factual, substantive issues of economic and financial feasibility will be tested.

With regard to the construction-lease arrangement,⁶ both Respondent and Intervenor's⁷ underscore the validity of Petitioner's assertion that such arrangement involves an issue of substance which the Commission was required to consider. Thus, Intervenor's argue (1) that the instant

⁶ See Pet. Br. pp. 25-27.

⁷ Resp. Br. pp. 15-16; Intv. Br. pp. 19-22.

construction-lease arrangement between Southern Union and Del Norte is not an issue for Commission consideration because "it does not affect interstate commerce in any manner" (Intv. Br. p. 22), and (2) that the decisions in *Mississippi River Fuel Corp.*, 9 FPC 198 (1950), and *Montana-Dakota Utilities Co.*, 8 FPC 409 (1949) are inapplicable because in those cases "problems could arise which would have a substantial adverse effect on interstate commerce" (Intv. Br. p. 21), and inferentially, that no "problems could arise" in the present case.

That the construction-lease arrangement does directly "affect" interstate commerce is clear. The sale and transportation of natural gas in interstate commerce by the El Paso companies authorized by Respondent are directly dependent upon construction and lease of facilities, all of which are described by Respondent as "the facilities covered by and subject to" the Presidential Permit (R. 311). Further, Respondent (R. 305-6) demonstrates clearly the interdependency of such facilities with the interstate facilities and the sale and transportation authorized in Docket No. CP66-105 (R. 307). It is idle to suggest that no "problems could arise" or that interstate commerce would not be affected if, after construction of the facilities proposed and lease thereof, the market for United States gas was not available as proposed. That cessation of exportation may occur prior to expiration of the terms of such contract is recognized by Respondent (R. 303, Finding Paragraph (e)).

CONCLUSION

For the foregoing reasons and those set forth in Petitioner's initial Brief, the Commission's Orders and Permit issued on December 28 and 29, 1965 in Docket Nos. G-513, CP66-104, CP66-105, and CP66-106, must be reversed and set aside, and the record remanded to Respond-

ent with directions to allow Petitioner to participate in the remanded proceedings as a party intervenor.

Respectfully submitted,

WILLIAM J. GROVE
PHILIP R. EHRENKRANZ
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005
Attorneys for Petitioner

Of Counsel:

GROVE, JASKIEWICZ, GILLIAM
AND PUTBRESE
600 Madison Building
1155 Fifteenth Street, N. W.
Washington, D. C. 20005

Dated: September 19, 1966

JOINT BRIEF FOR INTERVENORS, DEL NORTE
NATURAL GAS COMPANY AND SOUTHERN
UNION GAS COMPANY

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 19,973

FILED AUG 29 1966

JUAREZ GAS COMPANY, S. A., *Petitioner*

Nathan J. Paulson
CLERK

v.

FEDERAL POWER COMMISSION, *Respondent*

On Petition for Review of Orders of the
Federal Power Commission

Of Counsel:

HENRY W. SIMON, ESQUIRE
816 First National Building
Fort Worth, Texas

A. S. GRENIER, ESQUIRE
W. S. JAMESON, ESQUIRE
Fidelity Union Tower
Dallas, Texas 75201

GEORGE J. MEIBURGER, ESQUIRE
821 Fifteenth Street, N. W.
Washington, D. C. 20005
*Attorney for Del Norte
Natural Gas Company*

CHARLES E. MCGEE, ESQUIRE
JOHN T. KETCHAM, ESQUIRE
1145 Nineteenth Street, N. W.
Washington, D. C. 20036
*Attorneys for Southern
Union Gas Company*

COUNTERSTATEMENT OF THE QUESTION PRESENTED

In the opinion of Intervenor, the principal question presented herein is as follows:

Is Petitioner, a distribution company serving a portion of the City of Juarez, Mexico, aggrieved by Respondent's orders denying its Petition to Intervene and authorizing the exportation of natural gas to Mexico for sale to a second distributor for service in separate areas of the city which Petitioner admittedly was not serving, where Mexican authorities had already approved the distribution plans of the second distributor and such distributor had, in fact, completed a portion of its distribution system in one unserved area of the city and construction in other unserved areas was continuing, and where the Petition to Intervene did not allege any specific fact, which if accepted, would demonstrate that the proposed export was inconsistent with the public interest of the United States.

INDEX

	Page
COUNTERSTATEMENT OF THE CASE	1
REGULATIONS AND RULES INVOLVED	6
SUMMARY OF ARGUMENT	6
ARGUMENT	10
A. Petitioner Is Not Aggrieved	10
The Alleged "Competition"	14
The Cases Relied Upon by Petitioner Are Inapplicable	17
The Assignment and Lease Arrangement Between Southern and Del Norte	19
B. Respondent's Action Herein Accords With Its Consistent Administration of Sections 3 and 7 of the Act	23
The Alleged Inconsistency	29
C. Other Miscellaneous Contentions of Petitioner Are Equally Without Merit	30
CONCLUSION	34

APPENDIX:

Federal Power Commission Regulations Under Natural Gas Act	1a
Federal Power Commission Rules of Practice and Procedure	2a

TABLE OF AUTHORITIES

CASES:	Page
American Louisiana Pipeline Co., 1958, 20 FPC 575 ..	24
American Louisiana Pipeline Co. et al., 1962, 28 FPC 41	12
Associated Industries v. Ickes, 2 Cir. 1943, 134 F. 2d 694	13
Border Pipe Line Co. v. F.P.C., 1948, 84 U.S. App. D.C. 142, 171 F. 2d 149	7, 8, 12, 18, 23, 26, 30
Central Illinois Public Serv. Com'n. v. FPC, 7 Cir. 1964, 338 F. 2d 682	12
Cia Mexicana de Gas S.A. v. F.P.C., 5 Cir. 1948, 167 F. 2d 804	7, 18, 30
City of Pittsburgh v. F.P.C., 1956, 99 App. D.C. 113, 237 F. 2d 741	7, 17
El Paso Natural Gas Co., et al., 1958, 19 FPC 371	22, 30
El Paso Natural Gas Company, 1962, 27 FPC 1116 ..	25
FCC v. Sanders, 1940, 309 U.S. 470	13
Interstate Electric, Inc. et al. v. Federal Power Commission, 9 Cir. 1947, 164 F. 2d 485	11, 19
Mississippi River Fuel Corporation, 1950, 9 FPC 198 ..	21, 22
Montana-Dakota Utilities Co., et al., 1949, 8 FPC 409	21, 22
NBC v. FCC, 1942, 76 U.S. App. D.C. 238, 132 F. 2d 545, affirmed 1943, 319 U.S. 239	13, 16
National Coal Assn. v. F.P.C., 1951, 89 App. D.C. 135, 191 F. 2d 462	7, 17
Northwest Natural Gas Co., et al., 1954, 13 FPC 1249 ..	23, 24
Pacific Northwest Pipeline Corp., et al., 1955, 14 FPC 157	24
Pacific Power and Light Co., et al. v. FPC, 9 Cir. 1940, 111 F. 2d 1014	27
Panhandle Eastern Pipe Line Co. v. FPC, 3 Cir. 1955, 219 F. 2d 729	11, 19
Panhandle Eastern Pipe Line Co., et al., 1956, 15 FPC 46	24
Pittsburgh Radio Supply House v. Federal Communications Commission, 1938, 69 App. D.C. 22, 98 F. 2d 303	11
Red River Broadcasting Company, Inc. v. FCC, 1959, 105 App. D.C. 376, 267 F. 2d 653	11, 16
Rio Grande Valley Gas Co., 1951, 10 FPC 807	25, 28

	Page
Scripps-Howard Radio v. FPC, 1942, 316 U.S. 4	13
Tennessee Gas Transmission Company, et al., 1953, 12 FPC 311	25
Tennessee Gas Transmission Company, 1961, 26 FPC 860	24
Tennessee Gas Transmission Co., 1963, 30 FPC 759	22, 30
Treasure State Pipe Line Co., 1952, 11 FPC 1448	25
Treasure State Pipe Line Co., 1953, 12 FPC 1210	25
Treasure State Pipe Line Co., 1954, 13 FPC 1447	25
United States Cane Sugar Refiners' Ass'n. v. McNutt, 2 Cir. 1943, 138 F. 2d 116	11, 16, 19
Virginia Petroleum Jobbers Assn. v. F.P.C., 1958, 104 App. D.C. 106, 259 F. 2d 921	7, 17

STATUTES:

Natural Gas Act, 52 Stat. 831 (1938) 15 U.S.C.
§ 717, et seq.

Section 3	3, 8, 9, 13, 14, 18, 23, 25, 26, 27, 31
Section 7	8, 13, 17, 22, 23, 24, 25, 26, 27, 29
Section 7(c)	22
Section 15(a)	6, 14
Section 19(b)	10, 13, 14, 34

MISCELLANEOUS:

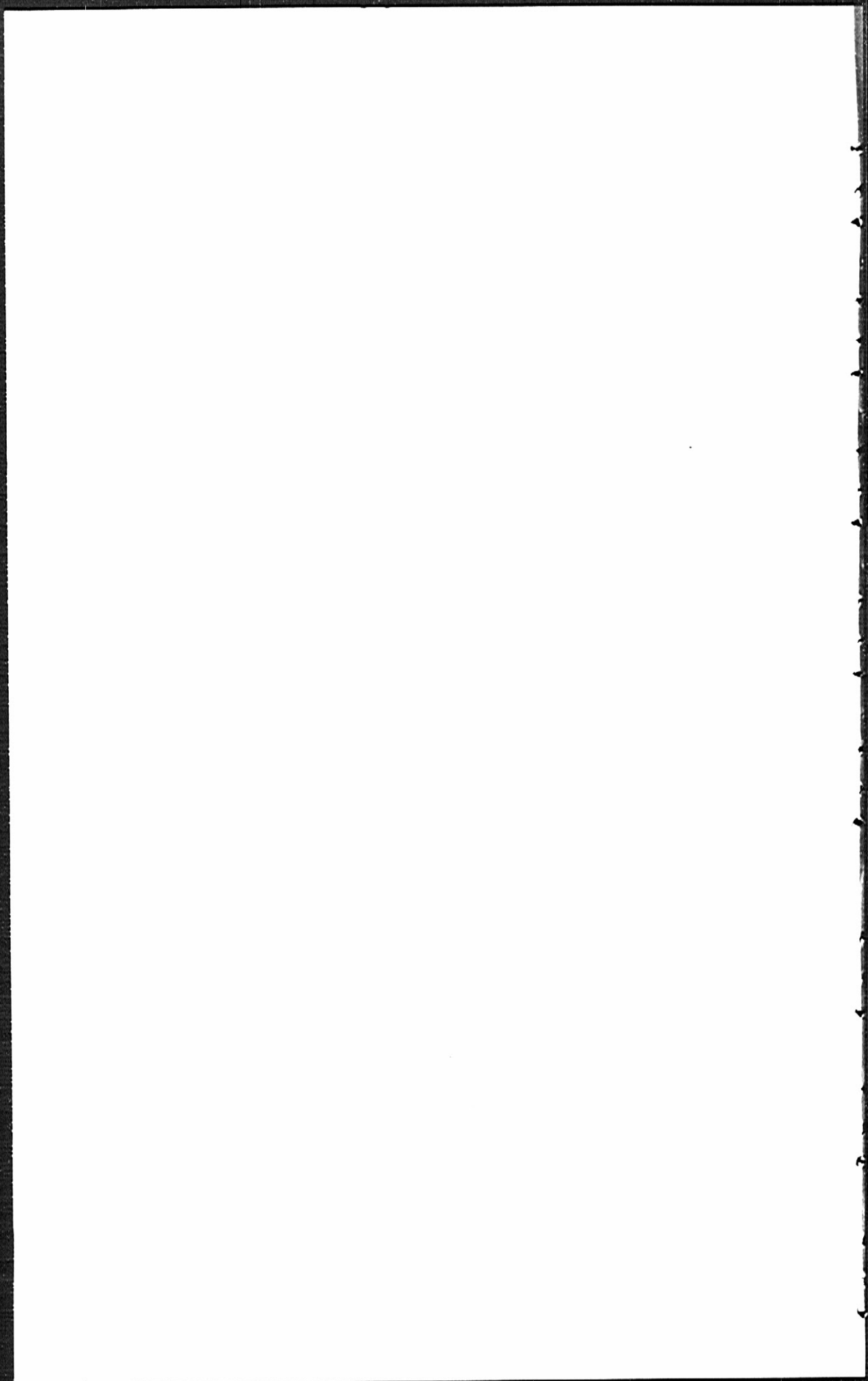
FPC Rules of Practice and Procedure under the
Natural Gas Act

Section 1.8	32
Section 1.32	4
Section 1.32(b)	6, 10, 33

FPC Regulations under the
Natural Gas Act

Section 157.7(a)	3, 6
Section 260.7	6

Executive Order No. 10485 3, 9, 30, 31



IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,973

JUAREZ GAS COMPANY, S. A., *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

**JOINT BRIEF FOR INTERVENORS, DEL NORTE
NATURAL GAS COMPANY AND SOUTHERN
UNION GAS COMPANY**

**On Petition for Review of Orders of the
Federal Power Commission**

COUNTERSTATEMENT OF THE CASE

Southern Union Gas Company (Southern) had been exporting natural gas to Petitioner for distribution in the City of Juarez, Mexico, pursuant to a contract which continued in effect until April 1, 1955, and thereafter unless either party gave sixty days notice of its intention to terminate the contract. The gas which Southern exported

to Petitioner was purchased by Southern in the State of Texas from El Paso Natural Gas Company (Gas Company) and transported for the account of, and delivered to Southern by El Paso Gas Transportation Corporation (Transportation) (R. 20, 4 FPC 826).¹

Petitioner had been distributing gas at retail in a part of the City of Juarez, Mexico, but the portion which was not being served by it was substantial. The Mexican governmental officials authorized Gas Natural de Juarez, S.A. (Gas Natural) to construct and operate a gas distribution system in the unserved areas of the city.² Southern was at that time exporting gas to Petitioner. Del Norte Natural Gas Company (Del Norte) proposed to export gas to Gas Natural. In order to avoid the construction of facilities which would substantially duplicate those of Southern, Del Norte and Southern executed an agreement by which, *inter alia*, Southern agreed to construct and then lease to Del Norte the facilities needed by Del Norte to deliver gas to Gas Natural at the international boundary, and to lease to Del Norte certain of Southern's existing facilities which were being used to supply gas to Petitioner (R. 211). Southern also agreed to assign to Del Norte the contract between Southern and Petitioner. The agreement of assignment contained provisions which bound Del Norte to render exactly the same service to

¹ Gas Company operates one of the largest interstate pipeline systems subject to Respondent's jurisdiction. It is a major natural gas company. Transportation is a wholly owned subsidiary of Gas Company. Transportation is engaged exclusively in transporting gas within the corporate limits of the City of El Paso, Texas, for Gas Company and for certain distributor companies and industrial consumers of Gas Company who obtain their respective requirements for natural gas from Gas Company (R. 17, 18). While each required separate authorization from Respondent, the separate corporate existence is not significant with respect to any issue in this case.

² On p. 3 of its Brief Petitioner notes that Gas Natural "proposes to render natural gas service in a portion of the City of Juarez not presently served by Petitioner."

Petitioner on precisely the same terms and conditions as Southern had been rendering service (R. 215).³

To obtain the gas required for export to Petitioner and Gas Natural, Del Norte entered into gas supply arrangements with Gas Company and Transportation similar to those previously described between Southern and these two companies (R. 194, 205).

Appropriate applications to effect the foregoing proposals were duly filed with the Respondent. Southern filed an application for revocation of its Presidential Permit and authorization to export natural gas (R. 230) and Del Norte filed an application, which was later supplemented, pursuant to Section 3 of the Natural Gas Act (Act) for authorization to export natural gas to Mexico (R. 132). It also filed an application pursuant to Executive Order No. 10485 for a Presidential Permit authorizing the operation and maintenance of gas export facilities at the international boundary (R. 186). Gas Company and Transportation filed a joint application pursuant to Section 7(b) of the Act for permission to abandon service to Southern, and, under Section 7(c) of the Act, for authorization to initiate service to Del Norte (R. 15). These latter two applications were filed in accordance with Section 157.7(a) of the Commission's Regulations Under The Natural Gas Act which provides, in substance, that Section 7(c) certificate applications may be filed in abbreviated form provided they contain "all information and supporting data necessary to explain fully the proposed project, . . ."⁴ As discussed more fully hereinafter, the foregoing applications were supported with cost, market, gas supply, franchise and economic feasibility data.

Appropriate notice to the public of the foregoing applications was given by Respondent. This notice contemplated

³ As will be more fully discussed hereinafter, this assignment was authorized by the express provisions of the contract and by Texas law.

⁴ Appendix 1a.

that no formal contested hearing would be held in the absence of a protest or petition to intervene (R. 241-4).

Petitioner filed a request for intervention in each of the foregoing proceedings in which it claimed a right to intervene essentially as a competitor of Gas Natural and as a person whose rights would be adversely affected by the granting of the applications. More specifically, Petitioner's request for intervention as of right was predicated primarily on the alleged competition resulting from Gas Natural's distribution operations in Juarez, Mexico. Petitioner asserted that Gas Natural had not obtained all authorizations required from the Mexican authorities to enable it to distribute gas in Juarez although it did not specify what additional authorizations were required. Petitioner also alleged generally that no good reason had been shown either for the assignment to Del Norte of the Southern-Petitioner gas contract or for the proposed construction-lease arrangement between Southern and Del Norte.

A supplement to Del Norte's application submitted certain documents under oath which showed that Gas Natural had authorization from the municipal, state and federal authorities in Mexico to construct and operate a distribution system in the zones or sections of the City of Juarez which Petitioner was not serving. The supplement also showed that Gas Natural's distribution system was already completed in one section of the City and in the process of construction in other sections or zones (R. 112, 116, 270, 274, 282).

Respondent denied Petitioner's request for intervention. It conditionally authorized the export and granted the applications before it without a contested hearing, pursuant to Section 1.32 of its Rules of Practice and Procedure (Rules), which contemplates such action provided "no issue of substance is raised by any request to be heard, protest

or petition . . .”⁵ With respect to Petitioner’s complaints about the alleged competitive situation in Juarez, Mexico, Respondent stated in part (R. 301-2):

“ . . . Juarez Gas contends that it is not consistent with the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. The Commission cannot assume the obligation of determining local franchise rights in Mexico. It is not the purpose of regulation under the Natural Gas Act to deal with franchise rights relating to the distribution of natural gas in foreign countries.

“The Federal Power Commission is not the proper forum in which Juarez Gas can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. This is, in essence, what Juarez Gas is seeking by its request to participate in these proceedings. Any determinations made by Mexican authorities having jurisdiction over such matters will be accepted by this Commission. Juarez Gas has failed to demonstrate that it has any interest in the subject applications which this Commission can consider, and it has failed to show any other reasons why it should be permitted to participate. Accordingly, the petition will be denied in each docket in which it is filed.”

Respondent’s export authorization to Del Norte was conditioned upon its obtaining “any necessary authorizations to import gas into the Republic of Mexico” (R. 303). This import permit has been obtained⁶ and Gas Natural is now distributing gas to consumers in Juarez.

⁵ Appendix 2a.

⁶ Appendix 5a-6a. Such import permits are issued for six month periods.

REGULATIONS AND RULES INVOLVED

The following regulations and rules are involved in addition to those included in Petitioner's Brief: Sections 157.7(a) and 260.7 of Respondent's Regulations Under the Natural Gas Act; and Section 1.32(b) of Respondent's Rules of Practice and Procedure. These are reprinted in the Appendix hereto.

SUMMARY OF ARGUMENT

A. Respondent properly denied Petitioner's request for intervention in the proceedings below and Petitioner is not aggrieved by the orders subject to review.

Petitioner and Gas Natural are not competitors within the meaning of Section 15(a) of the Act. Each company serves separate areas of the City of Juarez, Mexico. Neither has facilities in the service area of the other company. Gas Natural does not profess to have authorization to serve any of Petitioner's customers. Nor has Petitioner ever expressly alleged that it has a right, much less an exclusive right, under Mexican law to serve the areas of the City of Juarez which Gas Natural proposes to serve. Consequently, there is no competition between Petitioner and Gas Natural.

While Petitioner has questioned the sufficiency of the municipal, state and federal authorizations received by Gas Natural from the Mexican authorities, it has never specifically stated what additional authorizations are required. Nor has Petitioner controverted the fact that prior to the issuance of Respondent's export authorization, Gas Natural's distribution system was already completed in one unserved area of Juarez and the construction of its distribution system was continuing in other unserved areas (R. 302-3). It is unreasonable to assume that this could happen without the approbation of the appropriate Mexican authorities, and the fact is, as the record below also demonstrates, all required consents have been obtained

from the Mexican authorities. Under these circumstances, Respondent properly concluded that it would accept any determination made by the Mexican authorities with respect to which company should distribute gas in which areas of the City of Juarez. Respondent's order made gas available at the border for this purpose but the order was conditioned on obtaining "any necessary authorizations to import gas into the Republic of Mexico" (R. 303). Thus, no gas could have flowed into Mexico and have been distributed by Gas Natural without the consent and approval of the Mexican authorities.

None of the matters of which Petitioner complains, relating to the alleged economic detriment which it may suffer as a result of Gas Natural's distribution operations in Mexico, can have any adverse effect upon, or be inconsistent with, the public interest of the United States. Respondent, therefore, was required to issue the requested export authorization both by the terms of Section 3 of the Act and this Court's decision in *Border Pipe Line Co. v. F.P.C.*, 1948, 84 App. D.C. 142, 171 F. 2d 149.

Virginia Petroleum Jobbers Assn. v. F.P.C., 1958, 104 App. D.C. 106, 259 F. 2d 921, *National Coal Assn. v. F.P.C.*, 1951, 89 App. D.C. 135, 191 F. 2d 462, and *City of Pittsburgh v. F.P.C.*, 1956, 99 App. D.C. 113, 237 F. 2d 741, relied upon by Petitioner, do not support its claim of aggrievement. In each of these cases there was actual competition for fuel revenues between the petitioner and the pipeline applicant before Respondent. In *Cia Mexicana de Gas S.A. v. F.P.C.*, 5 Cir. 1948, 167 F. 2d 804, also relied upon by Petitioner, the intervenor there claiming aggrievement was serving the territory sought to be invaded by a competing supplier and the new supplier proposed to serve the very same industrial customers which the existing distributor was then actually serving. Here there are no overlapping service areas as Petitioner concedes (Pet. Br. p. 3) and thus no competition for fuel revenues.

Petitioner also alleged generally that "no good purpose or reason exists or has been shown or averred" (Pet. Br. p. 15) for the assignment by Southern to Del Norte of the Southern-Juarez gas contract. With respect to the lease arrangement between Southern and Del Norte, Petitioner merely suggests that Respondent should have looked into this matter and after doing so it may not have approved it. Petitioner has not alleged any specific injury to, or impairment of, its distribution operation in Mexico as a result of these transactions. Nor has it advanced any allegation showing that either transaction was inconsistent with the public interest of the United States. Neither transaction infringes any right or interest of Petitioner. Petitioner's rates and its service are exactly what they were. There is, therefore, no basis in fact or in law to support Petitioner's naked assertions of aggrievement as a result of the foregoing.

B. Petitioner's contention that Respondent erred in failing to consider the economic feasibility of the Gas Natural project in Juarez, Mexico is likewise without merit. It was not required to do so under this Court's decision in *Border Pipe Line Co. v. F.P.C.*, *supra*. Respondent's action in this case was in complete accord with its consistent administration of Section 3 of the Act in that the showing required relative to the foreign operations depends upon the potential effect upon consumers in, and the public interest of, the United States. Here the proposal to export the relatively minimal volumes of gas for Gas Natural's distribution operations could have no consequential effect upon the national public interest and the required showing was made under both Sections 3 and 7 of the Act.

C. The other miscellaneous contentions of Petitioner are equally without merit.

Petitioner contends that the proceedings before Respondent are a "nullity" because Southern did not file an application for authority to construct the border facilities

which it leased to Del Norte for exportation of natural gas to Mexico. Petitioner did not raise any claim of unauthorized construction in its Petition to Intervene. Aside from this, however, it is clear that Respondent was fully apprised of this arrangement. The details relating to these transactions were fully disclosed in the joint application of Gas Company and Transportation. They were described in detail in Respondent's published notice of the filing of the applications involved in these proceedings. The Presidential Permit issued to Del Norte made specific reference to, and fully contemplated the construction of, the facilities which were leased to Del Norte. Thus, Petitioner's argument that the proceedings below are a nullity is without merit.

Petitioner's argument concerning Respondent's alleged disregard of international relations is completely unfounded. As required by Executive Order No. 10485, Respondent received formal communications from the Secretaries of Defense and State expressly stating that neither Department had any objection to issuance of the requested authorizations. The subsequent request of the Ambassador of Mexico relating to Petitioner's request for a hearing was merely transmitted to Respondent without comment by the Secretary of State without comment and did not revoke or modify the previous formal declarations. Furthermore, the Federal Government of Mexico had just issued import authorization to Gas Natural. Consequently, Respondent properly determined the merits of Petitioner's request for intervention by the statutory standards under the Natural Gas Act.

Petitioner's allegations relating to Gas Natural's failure to comply with Mexican law and the alleged difficulties that Gas Natural is experiencing in obtaining appropriate Mexican rate authorization are completely refuted by the fact, which Petitioner cannot deny, that Gas Natural is presently operating a gas distribution business in Mexico.

Petitioner's contention that Respondent acted in violation of its own orders borders on the frivolous. Petitioner refers to the fact that in its public notice of the application Respondent stated that a public hearing would be held if a protest or petition for leave to intervene were filed. Petitioner argues that it filed a Petition to Intervene and that, therefore, Respondent acted in violation of its own order in not holding a formal public hearing. Obviously, Respondent's notice refers to a protest or petition to intervene which raises an issue of substance which gives rise to a need for a contested public hearing. This qualification is clearly stated in Section 1.32(b) of Respondent's Rules. Since Petitioner's request for intervention did not raise any issue of substance which Respondent was required to consider, no formal contested hearing was required.

For all of the foregoing reasons, Respondent properly denied Petitioner's request for intervention in the proceedings below and Petitioner is not aggrieved within the meaning of Section 19(2) of the Act, by issuance of the orders subject to review.

ARGUMENT

A. Petitioner Is Not Aggrieved

In its Petition to Intervene below and in its Petition for Review here Petitioner's assertion of aggrievement is predicated principally on the contention that Petitioner has a franchise to distribute natural gas in Juarez, Mexico, which is being invaded by the new company, Gas Natural, to the economic detriment of Petitioner. Thus it contends, insofar as the subject matter of the related Applications is concerned, it represents an interest which is competitive to interests represented by the Applicants and its Petition to Intervene should have been granted.

In order to establish that it is aggrieved within the meaning of Section 19(b) of the Natural Gas Act and that it had a right to intervene in the proceedings below, Petitioner must show that the administrative action of

which it complains results in a substantial, direct and immediate adverse impact upon it. *Red River Broadcasting Company, Inc. v. FCC*, 1959, 105 App. D.C. 376, 267 F. 2d 643. The threat of injury must be something more than highly speculative. General allegations of "competition" or "aggrievement" or "adverse effect" are not sufficient. Such general allegations must be analyzed in the light of the underlying factual situation. *Pittsburgh Radio Supply House v. Federal Communications Commission*, 1938, 69 App. D.C. 22, 98 F. 2d 303; *Panhandle Eastern Pipe Line Co. v. FPC*, 3 Cir. 1955, 219 F. 2d 729; *Interstate Electric, Inc. v. Federal Power Commission*, 9 Cir. 1947, 1964 F. 2d 485; *United States Cane Sugar Refiners' Ass'n. v. McNutt*, 2 Cir. 1943, 138 F. 2d 116. In this case, Petitioner does allege competition and adverse economic impact, but in its "detailed exposition of the situation, about which it complains, no factual allegations are given which support the contention that it is aggrieved." *Panhandle Eastern Pipe Line Co. v. FPC*, *supra*, 219 F. 2d at 731.

The evidence supporting the applications, submitted before Respondent under oath, demonstrated *inter alia*, that Gas Natural's distribution system was already partially completed, tested and approved for operation by the Federal Secretary of Industry and Commerce of the Republic of Mexico (R. 274, 282).⁷ Petitioner asserted that Gas Natural did not have the authorizations which it required.⁸ Respondent properly refused to provide the contesting parties with a forum for airing this controversy, which could have no possible bearing on interstate commerce in, or the public interest of, the United States. Respondent's export authorization was expressly conditioned upon "obtaining

⁷ During the previous months, Gas Natural had installed 3,200 domestic connections. Petitioner and its predecessors in interest had installed only 5,300 connections since 1902 (R. 286).

⁸ This allegation is now moot since Gas Natural is now serving gas consumers in Juarez.

any necessary authorizations to import gas into the Republic of Mexico." (R. 303).

Thus, before Respondent's order could have had *any* effect whatsoever, let alone the indirect effect which Petitioner here claims constitutes aggrievement, it was essential that Gas Natural obtain local distribution franchises and an import permit from the Mexican officials. No gas could have flowed into Mexico pursuant to Respondent's order unless the Mexican authorities had issued the import permit to Gas Natural. Likewise no imported gas could have been distributed by Gas Natural unless the Mexican authorities had issued it a local distribution franchise. Such authorizations have been granted.⁹

It is obvious as Respondent's order states (*supra*, pp. 5-6) that matters relating to the distribution of natural gas in Mexico are within the exclusive jurisdiction of the appropriate Mexican authorities. Respondent, therefore, properly concluded that determinations of the Mexican authorities relating to such Mexican affairs would be accepted by it. As Respondent's order also notes, it has consistently held that the resolution of a controversy to determine which of two distributors has a legal right to distribute gas in a community within the United States has been left to the appropriate local authorities in the state where the parties operate. See *American Louisiana Pipeline Co., et al.*, 28 FPC 41; *Central Illinois Public Service Co. v. FPC*, 7 Cir. 1964, 338 F. 2d 682, 687. Obviously, if such a rule has been determined to be the best means of resolving these problems within the United States, it is even more firmly grounded in wisdom when applied to appropriate governing authorities of a neighboring country. Any other course would produce governmental and administrative chaos.

As this court held in *Border Pipeline Co. v. FPC*, *supra*, the Commission's jurisdiction in an export proceeding,

⁹ Appendix 5a-6a.

pursuant to Section 3 of the Act, is more narrowly circumscribed than under Section 7 of the Act where the applicant is requesting certificate authorization to conduct operations in interstate commerce in this country. Under Section 3, the Commission must issue the export permit *unless* it finds that such action is inconsistent with the public interest of the United States. As Judge Prettyman stated for this Court in that case:

"It seems reasonable, or at least not unreasonable, that Congress should be concerned only with the fact of exportation or importation in the case of foreign commerce, but with rates, practices, accounting, facilities and financing in the case of domestic commerce." 84 U.S. App. D.C. 142, 171 F. 2d 15.

The additional competition with which Petitioner may be confronted is at best an indirect result of the importation of additional gas into Juarez, Mexico, and does not in any manner affect the public interest of the United States within the meaning of Section 3 of the Act. Therefore, such competition cannot confer aggrievement upon Petitioner within the meaning of Section 19(b) of the Act.

In its decision in *National Broadcasting Co. v. FCC*, 1942, 76 U.S. App. D.C. 238, 240, 132 F. 2d 545, 547, *affirmed* 1943, 319 U.S. 239, this Court held that the licensee of a radio station, suffering substantial electrical interference as a result of administrative action was sufficiently "aggrieved" or "adversely affected" to challenge the validity of the administrative action. But this Court also clearly held "that it is the public interest, not the private right, which is primarily at stake upon the appeal." To like effect, see *FCC v. Sanders*, 1940, 309 U.S. 470, and *Associated Industries v. Ickes*, 2 Cir. 1943, 134 F. 2d 694. In *Scripps-Howard Radio v. FCC*, 1942, 316 U.S. 4, 14, the Supreme Court stated:

"The Communications Act of 1934 did not create new private rights. The purpose of the Act was to

protect the public interest in communications. By § 402(b)(2) Congress gave the right of appeal to persons 'aggrieved or whose interests are adversely affected' by Commission action. 48 Stat. 1064, 1093. But these private litigants have standing only as representatives of the public interest. . . ."

The same reasoning applies to a claim of "aggrievement" under Section 19(b) of the Natural Gas Act. The purpose of this Act was to protect the public interest of the United States in the interstate gas business and ultimately the gas consumers in this country. Therefore, Petitioner would have standing to appeal, if at all, only where its private interests could be asserted as a means of representing our domestic public interest. But Petitioner has not asserted any adverse impact upon the domestic interstate commerce. Its claim of aggrievement as a result of alleged "competition" is in reality an attempt to insulate its economic interest in its gas distribution business in Mexico, which can affect only the public interest of Mexico. This kind of protection was not the purpose of the Natural Gas Act. Respondent therefore properly denied Petitioner's request for intervention. It also properly concluded that no issue of substance had arisen with respect to the applications before it and that Del Norte's requested authorization to export gas to Mexico was not inconsistent with the public interest of the United States within the meaning of Section 3 of the Act.

The Alleged "Competition"

In support of its request for intervention in the proceedings before Respondent, and in support of its legal standing before this Court, Petitioner relies principally upon its status as an existing distributor in the City of Juarez confronted now by the entry of another gas distribution system in neighboring sections of the same city. But Petitioner and Gas Natural are not competitors within the meaning of Section 15(a) of the Act.

Petitioner and Gas Natural each serve separate or contiguous portions of the metropolitan area of Juarez City. This is clear from the authorizations granted by the Mexican authorities to Gas Natural, which authorizations are specifically limited to certain specifically designated zones in the city in which Petitioner has never done, and is not now doing, business.¹⁰ Petitioner has no distribution facilities in the area of Juarez which Gas Natural is now serving or is franchised to serve. There is thus no duplication of facilities. As is the case in some cities in this country (e.g. El Paso, Texas, Pittsburgh, Pennsylvania and New York City) where two or more distributors serve separate areas, so in Juarez each customer obtains service from the company authorized by the Mexican authorities to serve his particular area of Juarez.

Gas Natural has all the authorizations which it requires to engage in the gas distribution business (R. 112, 116, 270, 274, 282). It has never proposed, nor has it contended that it is authorized, to serve the area of Juarez which Petitioner is now serving, and Petitioner itself concedes that Gas Natural renders natural gas service only in portions of Juarez where Petitioner is not presently serving (Pet. Br. p. 3). Moreover, Petitioner has never alleged that it has any right much less the exclusive right, under Mexican law, to serve the area which Gas Natural is serving. A major portion of Gas Natural's distribution system has already been constructed and service is presently being rendered. It is nonsense to assume that the appropriate Mexican authorities would sit idly by and let these things happen in violation of Mexican law. Clearly, therefore, none of Petitioner's franchise rights are being invaded. Furthermore, even assuming, *arguendo* only, that some franchise right of Petitioner was or is

¹⁰ For example, the authorization granted by the Municipal Presidency of the City of Juarez expressly provided that Gas Natural could install a distribution system in the city but only "in the zones where service is not presently provided by the company that now sells natural gas." R. 112.

being infringed by Gas Natural, Petitioner, a Mexican corporation, has or had remedies before the appropriate tribunals in the Republic of Mexico to contest the award of the contiguous franchises to Gas Natural, but no such action was taken; or if taken, it was not effective.

Thus the gas sold by Gas Natural is not in displacement of any sales by Petitioner but over and above them, and in different areas of the city in order to meet the gas needs in Juarez which Petitioner has never served. There is, therefore, no actual competition between Petitioner and Gas Natural for customers and no direct and immediate economic injury to Petitioner resulting from Respondent's export order. Respondent's order did no more than make gas available at the international boundary for whichever company the Mexican authorities determined should distribute that gas in the various areas of the city. There is no probable injury of a substantial character such as this Court found to exist in *NBC v. FCC*, *supra*. There is at most the insubstantial adverse effect which this Court found to exist in *Red River Broadcasting Company, Inc. v. FCC*, *supra*.

It may well be that at some future time Petitioner will be in actual competition with Gas Natural if either company should seek to expand its operations into the areas served by the other. But even if such a confrontation were to occur, it would be a local matter for resolution by Mexican authorities. Respondent clearly would have no jurisdiction to resolve such dispute. Neither can it be said that Respondent could have become involved in the identical kind of dispute presented herein by Petitioner.

In any event, possible future competition does not generate a direct and immediate adverse impact. Aggrievement is not created "by the mere possibility of having to meet competition in business [Petitioner] would rather have eliminated." *U.S. Cane Sugar Refiners' Ass'n. v. McNutt*, *supra*, 138 F. 2d 120.

**The Cases Relied Upon by
Petitioner Are Inapplicable**

The cases relied upon by Petitioner do not support its claim of aggrievement.

In *Virginia Petroleum Jobbers Assn. v. FPC*, 1958, 104 App. D.C. 106, 111, 259 F. 2d 921, 926, the Court emphasized that if applicant's Section 7 certificate application were granted by the Commission, the "product of Petitioner's members will be in competition with natural gas introduced into a new market through interstate commerce. They will be directly competing for fuel revenues with both Blue Ridge and Atlantic," the pipeline applicant before Respondent. In *National Coal Association v. FPC*, 1951, 89 App. D.C. 135, 138, 191 F. 2d 462, 465, there was a direct and immediate competitive relationship between the intervenors and the applicants who were seeking Section 7(c) certificate authorization from Respondent for their interstate projects. As the Court there stated, the coal companies would inevitably lose markets previously enjoyed by them and their employees would be deprived of jobs. Again, in *City of Pittsburgh v. FPC*, 1956, 99 App. D.C. 113, 237 F. 2d 741, there was direct competition between the operators of barges carrying petroleum products and the pipeline applicant before the Commission which proposed to convert its gas pipeline into an oil pipeline.

Petitioner in its Brief (p. 18) argues that it "will be directly competing for fuel revenues" with Gas Company, Transportation, Del Norte, and Gas Natural, and thus has "an undoubted right to intervene" under the principle enunciated by this Court in *Virginia Petroleum Jobbers, supra*. The short answer to this, of course, is that in the case now before the Court there can be no domestic competition between Petitioner and the applicants before Respondent since Petitioner operates in Mexico. Inasmuch as none of the applicants is engaged, or proposes

to engage, in the gas business in Mexico there can be no direct competition even in that country. In fact, because Del Norte will supply the gas needs of both Petitioner and Gas Natural, the increased volumes, if anything, would have a beneficial effect upon the domestic public interest. The only alleged basis for the claim of competition relates to distribution operations in Mexico and that will not stand scrutiny. In each of the cases relied upon by Petitioner there was a substantial effect upon domestic commerce and, therefore, upon the domestic public interest. Here there can be no significant effect at all, much less an adverse effect, upon the domestic public interest as a result of the alleged competition between two gas distributors in Mexico.

Petitioner relies also on *Cia Mexicana de Gas, S.A. v. FPC*, 5 Cir. 1948, 167 F. 2d 804. In that case, however, the intervenor there claiming aggrievement was serving the territory sought to be invaded by a competitive supplier, 167 F. 2d at 805. The new supplier proposed to serve the very same industrial customers which the existing distributor was then actually serving.¹¹ Here there are no overlapping service areas as Petitioner concedes (Pet. Br., p. 3) and Gas Natural cannot serve Petitioner's customers. Beyond this, the *Cia Mexicana* case, and the case before Respondent giving rise to it, antedated this Court's decision in *Border Pipeline, supra*, which made it clear that under Section 3 of the Act Respondent's jurisdiction is limited by Congress to only "the fact of exportation or importation in the case of foreign commerce" unless it can be shown that the proposed exportation in foreign commerce will be a burden on domestic commerce. As we discussed above, Petitioner has neither alleged nor shown that such a burden would or could result. In contrast, the export proposal in *Cia Mexicana* did affect the domestic commerce in a manner contemplated by *Border Pipeline*,

¹¹ 4 FPC 284 n. 2, 5 FPC 132-3.

because the additional gas to be exported by Reynosa, the new domestic supplier, would displace service to existing industrial customers in Mexico and the displacement of these customers would adversely affect the then existing domestic pipeline supplier, United Gas Pipeline Company. Here both Petitioner's and Gas Natural's requirements are supplied by Del Norte and ultimately by the same pipeline supplier, namely, Gas Company.

**The Assignment and Lease Arrangement
Between Southern and Del Norte**

Petitioner complains generally that "no good purpose or reason exists or has been shown or averred" (Pet. Br., p. 15) for the assignment by Southern to Del Norte of the Southern-Juarez gas contract and the lease arrangement. Petitioner does not allege any specific concrete injury to it, or impairment of its distribution operations in Mexico, as a result of these transactions. As a matter of fact, Petitioner will continue to receive the identical service it received from Southern. Moreover, it did not allege that the assignment was contrary to the domestic public interest or that it had evidence to prove such a contention. With respect to the lease arrangement, Petitioner merely suggests that Respondent should look into and consider this matter, and after doing so, it may or may not approve it (Pet. Br., p. 27). But Petitioner's general naked assertions do not provide any basis for intervention as it claims. *Interstate Electric Inc. v. FPC*; *United States Cane Sugar Refiners Assn., Inc. v. McNutt*; and *Panhandle Eastern Pipe Line Co. v. FPC*, *supra*.

No legal right or interest of Petitioner has been infringed as a result of the assignment. The basic agreement between Southern and Petitioner was a Texas contract and clearly assignable under Texas law without the consent of Petitioner, provided the assignee became bound by all the terms

and conditions thereof.¹² Therefore Southern had the contract right to assign. The agreement of assignment bound Del Norte to render exactly the same service to Petitioner on precisely the same terms and conditions as Southern had provided over the years (R. 215). The legal effect of the assignment is simply that Del Norte has assumed Southern's obligations to perform and, in light of Southern's secondary liability as assignor Petitioner now has a new and added security for performance.¹³ Thus Petitioner has not been legally aggrieved or prejudiced by virtue of the assignment. It has not lost any rights or advantages of any kind due to the change of its supplier.

Petitioner's rate cannot be increased either by virtue of the assignment or by virtue of the annual rental charge which Del Norte has agreed to pay Southern. Petitioner will pay Del Norte precisely the same designated flat price for each Mcf of gas purchased as it agreed to pay Southern. That price can be increased only if the seller's "gas costs" are increased. This, of course, refers primarily to the tariff rates of Gas Company, the ultimate supplier, whose rates cannot be increased except under the rate provisions of the Natural Gas Act. If Gas Company's rates were to be increased as a result of proceedings before Respondent, Petitioner's price on the gas purchased from Del Norte would be increased correspondingly. This potential, but unlikely, risk was assumed by Petitioner when it executed the basic contract with Southern. It exists independently

¹² Sections 10 and 15 of the contract (R. 180-1). Under Texas law, a contract is assignable without the consent of the other party in the absence of a contract prohibition against assignment. R. S. art. 569, *Central Power & Light Co. v. Purvis* (CA) 67 S.W.2d 1086, *err. ref.*; *Reo Motor Car Co. v. Good Motor Co.* (CA) 24 S.W.2d 67, *err. ref.*; 6 Texas Jurisprudence 2d, p. 404. Here the contract specifically provided that it was binding on the parties "and their respective successors and assigns."

¹³ *Corbin On Contracts*, Vol. 4, Sec. 866, p. 453. To the same effect, see, *Restatement, Contracts*, Sec. 160(4), *Corpus Juris Secundum*, Vol. 6, Sec. 25, p. 1073.

of the assignment. Thus Petitioner's rates cannot be increased by virtue of the assignment.

Petitioner's service has not been and cannot be curtailed or in any manner impaired by Del Norte as a result of the assignment. This is so for several reasons. Del Norte purchases its gas supply from Gas Company just as Southern did. In addition, Respondent's order authorizing Del Norte to export gas to Petitioner and Gas Natural, expressly provided that Del Norte shall not "materially change or alter its export operations without first obtaining the permission and approval of the Commission." (R. 303). Article 2 of the Presidential Permit issued to Del Norte expressly provides that no substantial change shall be made either in the facilities or "operations authorized by this permit until such change shall have been approved by the Commission." (R. 319).

Clearly, therefore, neither the assignment nor the construction lease arrangement between Del Norte and Southern can adversely affect Petitioner's rates or the service it is receiving. There is therefore no basis in fact or in law to support Petitioner's naked assertions of aggrievement as a result thereof.

Petitioner's reliance upon *Mississippi River Fuel Corporation*, 9 FPC 198 (1950), and *Montana-Dakota Utilities Co.*, 8 FPC 409 (1949), is completely misplaced. These cases deal with leases and operating agreements, but there the similarity ends.

In the first case, Mississippi proposed to have another company construct substantial gas transmission facilities which it would lease and then operate as an integral part of its extensive interstate transmission system. The Commission declined to grant the Section 7(c) certificate authorization requested by Mississippi on the ground that problems could arise which would have a substantial adverse effect on interstate commerce. In the second case Montana-Dakota proposed to operate the leased facilities

as a part of its interstate pipeline system. The Commission issued certificate authorization pursuant to Section 7(c) of the Act and attached conditions thereto which protected interstate commerce.

Thus in the *Mississippi* and *Montana-Dakota* cases applicants proposed to lease substantial facilities which they would operate as integral parts of their respective extensive interstate pipeline systems. In each instance there was a potential substantial adverse effect on interstate pipeline operations under the Act. None of these factors is present in the instant case. The lease arrangement between Southern and Del Norte does not affect interstate commerce in any manner. It has no adverse effect on foreign commerce. Neither Petitioner's rates nor its service are affected thereby. Moreover, Del Norte does not need certificate authorization pursuant to Section 7(c) of the Act to operate relatively insignificant facilities, located solely in Texas, and used solely for exporting gas to Mexico. Also, the very cases on which Petitioner relies, namely *Mississippi* and *Montana-Dakota*, *supra*, hold that Southern does not need certificate authorization to construct the facilities which it leased to Del Norte.

In a somewhat analogous situation the Commission dismissed an application of Nevada Natural Gas Pipe Line Company for a certificate under Section 7(c) of the Act to construct certain facilities it proposed to lease to El Paso, holding that the applicant there was not subject to the jurisdiction of the Commission because "Nevada will neither operate nor maintain said facilities but will lease such facilities to El Paso under the terms of an existing lease agreement." *El Paso Natural Gas Co., et al.*, 19 FPC 371, 372 (1958); see also *Tennessee Gas Transmission Co.*, 30 FPC 759, 767, 768, where, as here, the lessor was not subject to the jurisdiction of the Commission.

It is plainly evident, therefore, that Petitioner's claim of injury from the Southern-Del Norte lease arrangement is without merit.

B. Respondent's Action Herein Accords With Its Consistent Administration of Sections 3 and 7 of the Act

Petitioner contends that Respondent erred in failing to consider the economic feasibility of the Gas Natural project in Juarez, Mexico. As we understand Petitioner's argument, it is predicated on two somewhat related grounds: 1) Respondent must apply the same considerations under Section 3 as under Section 7 of the Act, citing *Northwest Natural Gas Co.*, 1954, 13 FPC 1249. Under Section 7 economic feasibility is an important consideration, and, Petitioner argues, it is therefore equally important under Section 3. 2) The economic feasibility of the Gas Natural project affects all of the applications and therefore affects interstate commerce (Pet. Br., pp. 24-26).

This argument, and the conclusion which Petitioner draws from it, are in direct conflict with this Court's decision in *Border Pipeline Co. v. FPC*, *supra*, wherein this Court held that "the exportation of natural gas to a foreign country is not 'interstate' commerce," and that under Section 3 of the Act Respondent's jurisdiction is limited to the fact of exportation in the absence of a burden on domestic commerce. Petitioner's contentions are also in conflict with Respondent's consistent practice under the Natural Gas Act.

There is no rule or regulation promulgated by Respondent that the Section 7 standards for determining domestic public convenience and necessity must be applied to export or import proceedings pursuant to Section 3 of the Act. Its decisions uniformly hold that the extent to which it is necessary to apply similar standards is a pragmatic judgment to be made on the basis of whether or not the import or export proposal could have a potential substantial impact on the domestic public interest.

In the import proceedings involving *Northwest Natural Gas Co.*, *supra*, on which Petitioner relies, Respondent considered evidence relating to the gas supply and economic

feasibility of the Canadian pipeline project. But there the Canadian project supplied the total gas needs of a Section 7 applicant for a major new domestic interstate pipeline system, costing many millions of dollars, to serve gas consumers in the northwestern part of the United States. In that case, the domestic public interest and the service to domestic gas consumers were critically affected by the success or failure of the Canadian project.

The same observations are applicable to the revised pipeline project to bring natural gas to the northwestern area of the United States in the subsequent import case, *Pacific Northwest Pipeline Corp.*, 1955, 14 FPC 157. In *American Louisiana Pipeline Co.*, 1958, 20 FPC 575, Respondent denied the Section 7 major domestic pipeline project of Midwestern because its proposed Canadian gas supplier had not shown sufficient reserves above those needed for service in Canada. This was again a critical consideration affecting gas consumers in the United States. But in the import proceedings involving *Tennessee Gas Transmission Company*, 1961, 26 FPC 860, 865, the Commission held that submission of market evidence is not an absolute requirement even under Section 7 of the Act. Here the importation was on an interruptible basis and no additional pipeline facilities were proposed by the domestic natural gas company.

On the other hand, in *Panhandle Eastern Pipe Line Co.*, 1956, 15 FPC 46, applicant proposed to export small volumes of gas in relation to system capacity for distribution in Canada as an incidental part of a major Section 7 application to expand its system and sell increased volumes of gas to its domestic distributors. Gas supply was an issue in the case. The Commission authorized the export after finding that the applicant's gas supply was adequate to export the gas without impairing domestic service. There was no requirement for detailed market evidence and a showing of economic feasibility of the Canadian

distributor's operation. In cases involving the export of relatively small volumes of gas Respondent's orders demonstrate that it has not required extensive market and economic feasibility data even where distribution systems had to be constructed to serve the communities in the foreign country. *El Paso Natural Gas Company*, 1962, 27 FPC 1116; *Treasure State Pipe Line Co.*, 1954, 13 FPC 1447; 1953, 12 FPC 1210; 1952, 11 FPC 1448; *Rio Grande Valley Gas Co.*, 1951, 10 FPC 807, 808.

We believe that a fair analysis of Respondent's orders on proposals to export or import gas discloses that Respondent has acted on a case-by-case basis. It has not adopted any uniform inflexible standard. Where the success of the gas business and continued service to the ultimate consumers in the United States depend upon the success of a pipeline project in another country, the Commission has carefully examined into, and required evidence on, the significant aspects of the foreign project on which the success of the domestic project depends. Much less has been required and much less is needed where few facilities are proposed to be constructed and only small volumes of gas are to be exported for distribution to consumers in another country.

A clear statement of Respondent's practice in this respect is found in *Tennessee Gas Transmission Company, et al.*, 1953, 12 FPC 311. Here the applicant proposed a mammoth 193 million dollar pipeline project under Section 7 of the Act for the purpose, *inter alia*, of supplying the increased requirements of its existing distributor-customers in this country and also for the transportation of gas to be exported to Canada pursuant to Section 3 of the Act. In its opinion in that case Respondent stated, 12 FPC 313-314:

"The Natural Gas Act looks primarily to the protection of those economic and public interests in the United States which are concerned with the transportation and sale of natural gas in interstate or foreign

commerce. Incident to this, of course, we must consider not only the effects of such transportation and sale in relation to the production of gas, but also in relation to the market areas which can be or should be served, especially those in the United States. Nevertheless, this is not to say that the act contemplates an examination by this Commission of the total effects to be anticipated from the introduction of natural gas in new market areas in a foreign country to which it is proposed to export limited quantities.

“Our firmly established policy in all cases within our responsibilities has been to deal with each individual application on the basis of the record in that particular case. There is no occasion in this instance to deviate from that practice and policy.

* * * * *

“It is contended also that if we authorize the exportation of an average of approximately 62 million cubic feet a day to Canada to serve Toronto and surrounding markets, that such export might impair or destroy the economic feasibility of a possible all-Canadian pipeline across Canada from Alberta. Manifestly we have no jurisdiction or authority over such a pipeline. Our decisions under the Natural Gas Act obviously cannot extend to those essential determinations which would be required if we should undertake to solve Canadian problems entirely outside of our authority. We cannot act for the officials of Canada, nor can we make realistic or valid determinations beyond even the constitutional power of Congress.”

What is there said with respect to natural gas operations in Canada applies with even greater force to Gas Natural's much smaller distribution operations in Mexico. It accords with this Court's decision in *Border Pipeline Co. v. FPC*, *supra*, and with Respondent's consistent practice under the Act. It recognizes the broader scope of the domestic public interest under Section 7 of the Act and Respondent's more limited responsibilities under Section 3 of the Act, under which Respondent must issue the export permit

unless it finds that the proposed export "will not be consistent with the public interest" of the United States. As the court stated in *Pacific Power and Light Co. v. FPC*, 9 Cir. 1940, 111 F. 2d 1014, construing language in Section 203(a) of the Federal Power Act, comparable to that found in Section 3 of the Natural Gas Act:

"... The phrase 'consistent with the public interest' does not connote a public benefit to be derived or suggest the idea of a promotion of the public interest. The thought conveyed is merely one of compatibility."

"... We see no more in the prohibition than the purpose of insuring against public disadvantage through the requirement of a showing that mergers of this sort will not result in detriment to consumers or investors or to other legitimate national interests"

Respondent had before it evidence demonstrating: The cost of Gas Natural's proposed distribution system; its proposed markets; the gas needed from this Country to serve such markets; the comparative costs of other fuels in Juarez; the fact that Gas Natural's distribution system was already constructed and ready for operation in Zone 1; and the fact that construction of its distribution system was continuing in other areas of the city (R. 85-88, 109-9, 122, 274, 282, 288, 291). Contrary to Petitioner's unsupported allegation, this was a clear indication of financial and economic feasibility. At least equally significant, however, it also established that the Mexican authorities had determined that Gas Natural should distribute gas in those areas of the city which Petitioner had failed to serve for many years. Respondent properly refused to question, must less frustrate, these determinations of the Mexican authorities by declining to make gas available at the border.

Furthermore, the proposed total investment by the domestic companies herein was *de minimis* and, consistent

with the precedents discussed above (pp. 23-27), did not warrant extended examination by Respondent.

Only El Paso and Transportation requested authorizations for operations in interstate commerce.¹⁴ They had previously been selling and transporting gas to Southern for export to Petitioner (R. 22). An additional approximate volume of only 3,000,000 Mcf annually was proposed to be exported to Gas Natural (R. 24). This volume is utterly insignificant in relation to Gas Company's annual sales of approximately 1,396,000,000 Mcf¹⁵ and could not affect its ability to render service to its existing customers.¹⁶

Nevertheless, Gas Company incorporated its Form No. 15 Report,¹⁷ its annual report of total system gas supply and deliverability, in the event Respondent required such information for this minor application (R. 29). The cost of the facilities required to render the additional service to Del Norte was only \$32,000. This may be contrasted with Gas Company's total gas plant in service of approxi-

¹⁴ The Gas Company and Transportation Section 7 applications were filed pursuant to Section 157.7 of Respondent's Regulations which contemplates an abbreviated showing under the conditions there specified, all of which were extant here. (App. 1a).

¹⁵ Schedule 514 of Gas Company's FPC Form No. 2 Annual Report filed with Respondent for the calendar year ended December 31, 1965. We do not suggest that reference to this report by Respondent was necessary. The size of Gas Company and its operations are facts of general knowledge in the industry.

¹⁶ In its order authorizing the exportation of gas by *Rio Grande Valley Gas Co.*, 1951, 10 FPC 807, 808, Respondent concluded, "A comparison of the quantities of natural gas proposed to be delivered to Gas de Matamoros, S.A., with applicant's anticipated sales in 1955, reveals that such quantities amount to approximately 1.5% of applicant's total 1955 sales." The percentage relationship is even substantially less here.

¹⁷ This report is submitted under oath pursuant to Section 260.7 of Respondent's Regulations. Appendix 1a.

mately \$1.5 billion.¹⁸ The sale and transportation to Del Norte would be made pursuant to effective FPC tariff rates. These operations would have, at most, an infinitesimal effect on the financial condition of Gas Company and Transportation (R. 28-30, 128). Gas Company alone had total gas operating revenues of approximately \$467 million for the calendar year 1965.¹⁹

On the basis of the foregoing, the Commission properly found that the matters raised by Petitioner relating to "competition" in Mexico and the alleged non-feasibility of the Gas Natural project did not affect "interstate commerce" and that the exportation to Mexico of a small additional volume of gas would not be inconsistent with the public interest of the United States. This is true whether the applications be considered separately or interdependent upon each other.

The Alleged Inconsistency

Petitioner purports to see an inconsistency between Respondent's finding that the interest asserted by Petitioner does not affect interstate commerce, and its finding (R. 304), that the operations for which Gas Company and Transportation requested authorization are in interstate commerce for purposes of Section 7 (R. 307).

Of course the four applications by Gas Company, Transportation, Del Norte and Southern are interrelated. But that does not mean that the nature of Del Norte's export application determines the nature of the Gas Company and Transportation applications which would make gas available for this purpose. Nor does it mean that every interest asserted in any or all four of the applications necessarily affects interstate commerce. Congress drew a distinction

¹⁸ Schedule 504 of Gas Company's FPC Form No. 2 Annual Report filed with Respondent for the calendar year ended December 31, 1965.

¹⁹ *Ibid.*, Schedule 514.

between interstate and foreign commerce in Sections 3 and 7 of the Act. *Border Pipe Line Co. v. FPC*; *Cia Mexicana de Gas, S.A. v. FPC*, *supra*. Respondent's orders merely recognize this distinction.

**C. Other Miscellaneous Contentions of Petitioner
Are Equally Without Merit**

Petitioner contends that these proceedings are a "nullity" because Southern did not file an application under Executive Order 10485 for authority to construct the border facilities it would lease to Del Norte for exportation of natural gas to Mexico. As has been stated hereinbefore Southern does not propose itself to export natural gas but has assigned to Del Norte all rights, title and interest in its contract with Petitioner and has surrendered its export license with Respondent's approval. Moreover, the leasing agreement between Southern and Del Norte places all maintenance responsibility on Del Norte and gives Del Norte exclusive possession and control of the licensed facilities including those situated at the border. Such an arrangement is not at all unusual and has been considered by the Respondent in other proceedings involving Section 7 certificate cases. *El Paso Natural Gas Co.*, 19 FPC 371 (1958); *Tennessee Gas Transmission Co.*, 30 FPC 759 (1963). Under the terms of the Presidential Permit issued to Del Norte, it has the full and sole responsibility, and authority, to maintain and operate the border facilities in question. Southern merely proposed to construct the minor facilities needed and such plans were fully disclosed in the joint application of Gas Company and Transportation to the Commission. Furthermore, in its published Notice of the filing of the subject applications, Respondent described in detail the facilities Southern proposed to construct, their cost and the lease arrangement with Del Norte.²⁰ Although Petitioner was thus thoroughly ap-

²⁰ It is to be noted, in addition, that Southern was before Respondent supporting its application requesting the vacation of its Presidential Permit and related export authorization (Docket No. G-513).

prized of the total scope of the application, it raised no question in its Petition to Intervene that Southern did not file an application for a Presidential Permit to construct facilities. It merely contended that the applications below had not demonstrated any justification "consistent with the public interest" for the proposed construction of increased facilities by Southern and subsequent lease to Del Norte. Certainly, Southern complied with the spirit and the letter of the law in presenting Respondent with a complete description of its proposal.

In any event, in view of the foregoing circumstances, the absence of a specific application by Southern for authority to construct the border facilities in this case could in no way affect the determination of the central question which is whether Petitioner had the right to intervene in the proceedings below. Petitioner has neither alleged nor shown how it has been aggrieved by the absence of such an application. At best Petitioner is urging this issue as self-styled protector of the public interest, although it has not shown how the domestic public interest has been adversely affected.

Petitioner's argument ignores the fact that Respondent, which is charged by law to protect the domestic public interest, was fully aware of Southern's construction proposals, was satisfied that the domestic public interest was served by such proposals, and, accordingly, issued a Presidential Permit to Del Norte which made specific reference to, and fully contemplated the construction of, such facilities.

Likewise, Petitioner's argument concerning Respondent's alleged disregard of international relations borders on the frivolous and should be rejected. In issuing the export authorization pursuant to Section 3 of the Act and the Presidential Permit pursuant to Executive Order No. 10485, Respondent manifested due regard for international relations between this country and the Republic of Mexico.

Respondent had received formal communications from the Secretaries of Defense and State expressly stating that neither department of the executive saw any reason why the requested authorization should not issue. Subsequently the Ambassador of Mexico requested the Secretary of State to "use his good offices" with Respondent in support of Petitioner's request for participation in the hearings before Respondent. The Secretary of State merely transmitted this communication from the Ambassador. The Secretary of State did not revoke or modify his previous declaration that there was no foreign policy objection to issuance of the export authorization. The Ambassador of Mexico stated no objection to the proposed export of gas to his country. His government, through the Federal Secretary of Industry and Commerce, had just issued import authorization to Gas Natural.²¹ The Ambassador's request went only to matters of procedure, namely, whether Petitioner's request for intervention should be granted and a hearing held. This is hardly a "foreign policy" matter. Moreover, Petitioner's argument necessarily assumes that the Ambassador was urging the Secretary of State, and ultimately, Respondent to grant Petitioner's intervention even in the absence of a showing that Petitioner had an interest warranting intervention. We do not think that it is reasonable to construe the Ambassador's request to mean that Respondent should disregard this requirement of its Rules (§ 1.8). Under these circumstances, Respondent properly determined the merits of Petitioner's request for intervention by the statutory standards under the Natural Gas Act.

We also make brief reference to Petitioner's assertions relating to the alleged stop order issued by the Mexican authorities against Gas Natural because of its failure to comply with Mexican law and the alleged difficulties that Gas Natural is experiencing in obtaining appropriate rate

²¹ Appendix 5a.

authorization from the Mexican authorities. The short answer to these contentions is that Gas Natural has constructed and is operating a gas distribution business in Mexico. Apparently, the Mexican authorities are satisfied that Gas Natural is operating in due regard for Mexican law.

Petitioner also contends that in its public notice of the applications, Respondent stated that if a protest or petition for leave to intervene were filed a public hearing would be held. Petitioner argues that since it filed a petition to intervene, Respondent acted in violation of its own orders and therefore acted unlawfully. This is a completely unreasonable interpretation of Respondent's notice and its Rules of Practice and Procedure. Under Petitioner's theory Respondent could never examine the merits of a petition to intervene and a formal contested hearing would automatically be required in all cases where even a frivolous protest or petition to intervene had been filed. If this were the rule Respondent would be powerless to control its administrative processes and it would be utterly at the mercy of anyone who filed a paper entitled "Protest" or "Petition to Intervene." This is an argument *reductio ad absurdum*.

Obviously Respondent's notice must necessarily be construed to mean a protest or petition to intervene of *substance* which gives rise to a need for a contested public hearing. In fact, this qualification is clearly stated in Respondent's Rules (§ 1.32(b)).²² Since there was no issue of substance raised by the applications or the Petition to Intervene within the meaning of Section 1.32(b) of Respondent's Rules of Practice and Procedure, a formal hearing was not required and Respondent's findings and conclusions in support of its orders were more than adequate.

²² Appendix 2a-3a.

CONCLUSION

For all of the foregoing reasons, intervenors submit that Respondent properly denied Petitioner's request for intervention in the proceedings below, that Petitioner is not aggrieved within the meaning of Section 19(b) of the Natural Gas Act by Respondent's orders under review and that the Petition for Review filed herein should be dismissed and Respondent's orders affirmed.

Respectfully submitted,

Of Counsel:

HENRY W. SIMON, ESQUIRE
816 First National Building
Fort Worth, Texas

A. S. GRENIER, ESQUIRE
W. S. JAMESON, ESQUIRE
Fidelity Union Tower
Dallas, Texas 75201

GEORGE J. MEIBURGER, ESQUIRE
821 Fifteenth Street, N. W.
Washington, D. C. 20005
*Attorney for Del Norte
Natural Gas Company*

CHARLES E. MCGEE, ESQUIRE
JOHN T. KETCHAM, ESQUIRE
1145 Nineteenth Street, N. W.
Washington, D. C. 20036
*Attorneys for Southern
Union Gas Company*

APPENDIX

FEDERAL POWER COMMISSION
REGULATIONS UNDER NATURAL GAS ACT

§ 157.7 ABBREVIATED APPLICATIONS.

(a) *General.* When the operations, sales, service, construction, extensions, acquisitions or abandonment proposed by an application do not require all the data and information specified by this part to disclose fully the nature and extent of the proposed undertaking, an abbreviated application may be filed provided it contains all information and supporting data necessary to explain fully the proposed project, its economic justification, its effect upon applicant's present and future operations and upon the public proposed to be served, and is otherwise in conformity with the applicable requirements of this part regarding form, manner of presentation, and filing. Such an application shall (1) state that it is an abbreviated application; (2) specify which of the data and information required by this part are omitted; and (3) relate the facts relied upon to justify separately each such omission.

* * * * *

§ 260.7 FORM NO. 15, ANNUAL REPORT OF GAS SUPPLY AND
DELIVERABILITY FOR CERTAIN NATURAL GAS COMPANIES.¹

(a) An Annual Report of Total Gas Supply and Deliverability for natural gas companies, designated as FPC Form No. 15, is being prescribed in two phases. The first phase report, consisting of Parts I, II and III is prescribed for requesting information relative to the calendar year 1963. The second phase report, consisting of Parts I, II, III, and such other parts as are hereafter promulgated by order of the Commission, after approval by the Bureau of the Budget, will be prescribed for annual use commencing with information for the calendar year 1964.

¹ As used herein, "natural gas company" does not include "independent producers," as defined in § 154.91(a) of this chapter.

(b) Each natural gas company, as defined by the Natural Gas Act, as amended (52 Stat. 821), other than a company purchasing its entire supply of natural gas from other companies subject to the provisions of this section, shall prepare and file with the Commission for the calendar year ending December 31, 1963, on or before July 1, 1964, and for subsequent years on or before each May 1, thereafter, an original and four conformed copies of FPC Form No. 15. A company exempt from this paragraph by virtue of the fact that it purchases its entire supply of natural gas from another company or companies subject to this section shall file, in lieu of the report, a statement giving the name(s) and address(es) of the company or companies from which it purchases its supply. One copy of the report should be retained in its files. The conformed copies may be carbon or reproduced by any means that provide clearly and accurately aligned impressions.

(c) This annual report is designed to furnish the Commission with information concerning the gas supply organization of the company, the company's total gas supply, the company's gas procurement program, each reservoir from which the company obtains gas, contracts under which the company purchases gas and deliverability data.

[Order 279, 29 F.R. 4873, Apr. 7, 1964]

* * * * *

**FEDERAL POWER COMMISSION
RULES OF PRACTICE AND PROCEDURE**

§ 1.32 SHORTENED PROCEDURES.

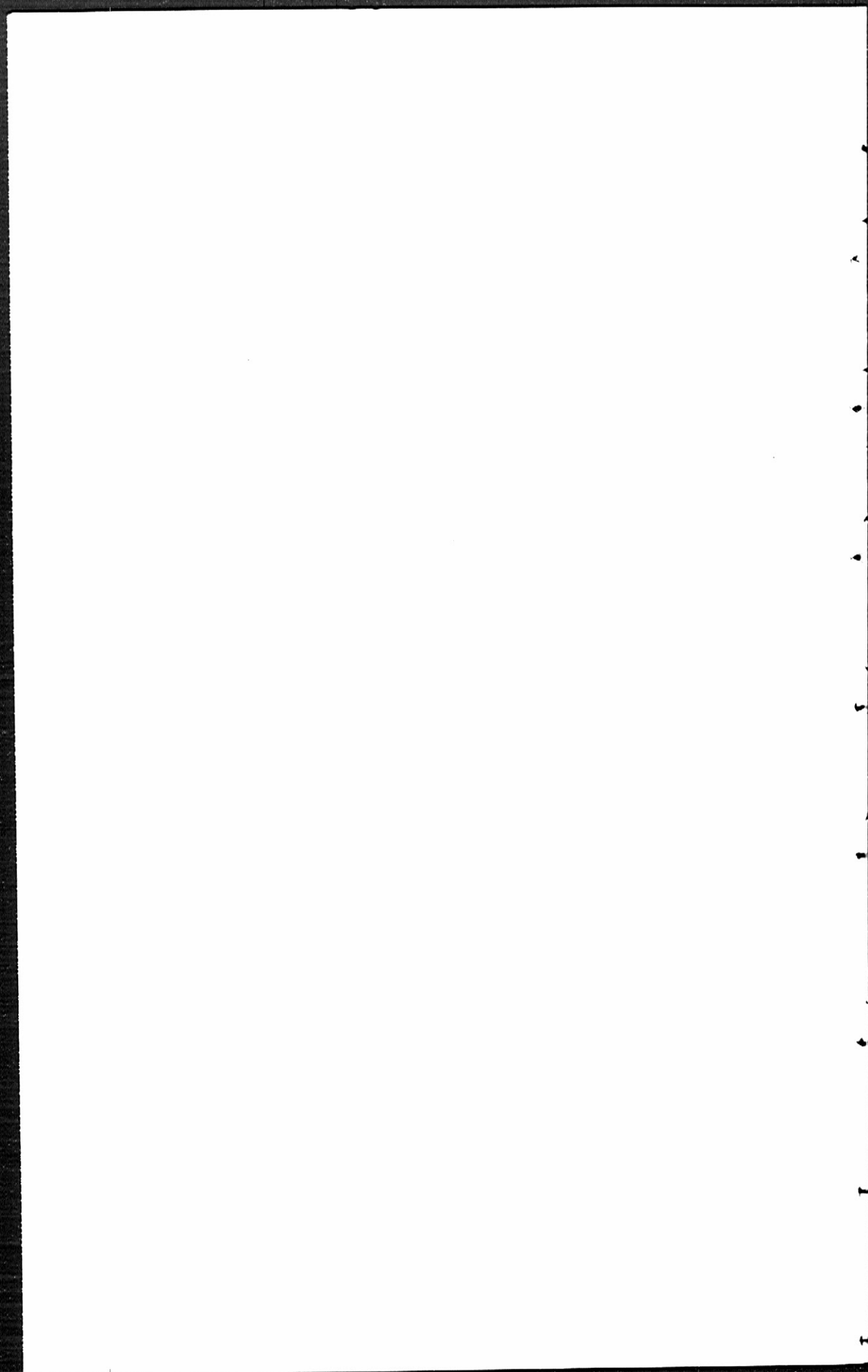
* * * * *


(b) *Noncontested proceedings.* In any proceeding required by statute to be set for hearing, the Commission when it appears to be in the public interest and to the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may after a hearing during which no

opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record; *Provided*, (1) the applicant or initial pleader requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (2) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the FEDERAL REGISTER of the notice of the filing of an initial pleading and notice or order fixing date of hearing, which notice or order shall state that the Commission considers the proceeding a proper one for disposition under the provisions of this section, and shall otherwise conform with the requirements of § 1.19. Requests for the procedure provided by this section may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after noncontested hearing, will be final, subject to reconsideration by the Commission upon application for rehearing as provided by statute.

[Order 141, 12 F.R. 8482, Dec. 19, 1947]

• • • • •



Mexico, D.F. 29 Nov. 1965		Import Permit No. 00149336	
		Reference	
SECRETARY OF STATE & PUBLIC CREDIT General Directorate of Customs This Secretariat is authorized to importation of indicated merchandise by the person indicated.			
Name GAS NATURAL DE JUAREZ, S. A.		Fiscal Roll Certificate	
Address 16 De Sept. St. #738 East Juarez, Chih.		National Tax Register	
QUANTITY DESCRIPTION OF MERCHANDISE 6,100,000 meter ³ Six Million One Hundred Thousand Cubic Meters of Natural Gas Imported by Pipeline. Value \$1,211,574.37 pesos This permit may be cancelled upon previous advisement to the importer. Mex Law Section 27.11.A.001 C.B.			
Custom House Juarez, Chih.	Source. UNITED STATES OF NORTH AMERICA	Duration: from Dec. 1, 1965 to Mar. 31, 1966	Register No. AC 7327 171757
D No. 038489 Copy sent to: PETROLEOS MEXICANOS - PRESENT			
SUFFRAGIO DE... El... Se...			



México, D. F. 10. de ABRIL de 1966

C. SECRETARÍA DE HACIENDA Y CRÉDITO PÚBLICO
DIRECCIÓN GENERAL DE ALCANTARILLAS
PRESENTE

SECRETARÍA DE INDUSTRIA
Y COMERCIO

DIRECCIÓN GENERAL DE COMERCIO

Esta Secretaría autoriza a la persona que a continuación se cita, para importar la mercancía que se menciona

Nombre **GAS NATURAL DE JUAREZ, S.A.**

Ced. Padrón Fiscal

Reg. Nac. Imp.

Domicilio **CALLE 16 DE SEPTIEMBRE NO. 738 ORIENTE.-MEXICO, D.F.**

DESCRIPCIÓN DE LA MERCANCIA

Cantidad **8' 100,000 M3.**

Valor **\$ 1'211,574.37**

Fracción Arancelaria
27.11.A.001

C. B.

ADUANA **CD. JUAREZ, CHIH.**

ESTADOS UNIDOS DE
NORTEAMERICA.

Del 10 de ABRIL
al 30 de SEPT.

de 1966 de 1966

Reg. No. **32391 AG.-1006**

Quitar Chiques

042488

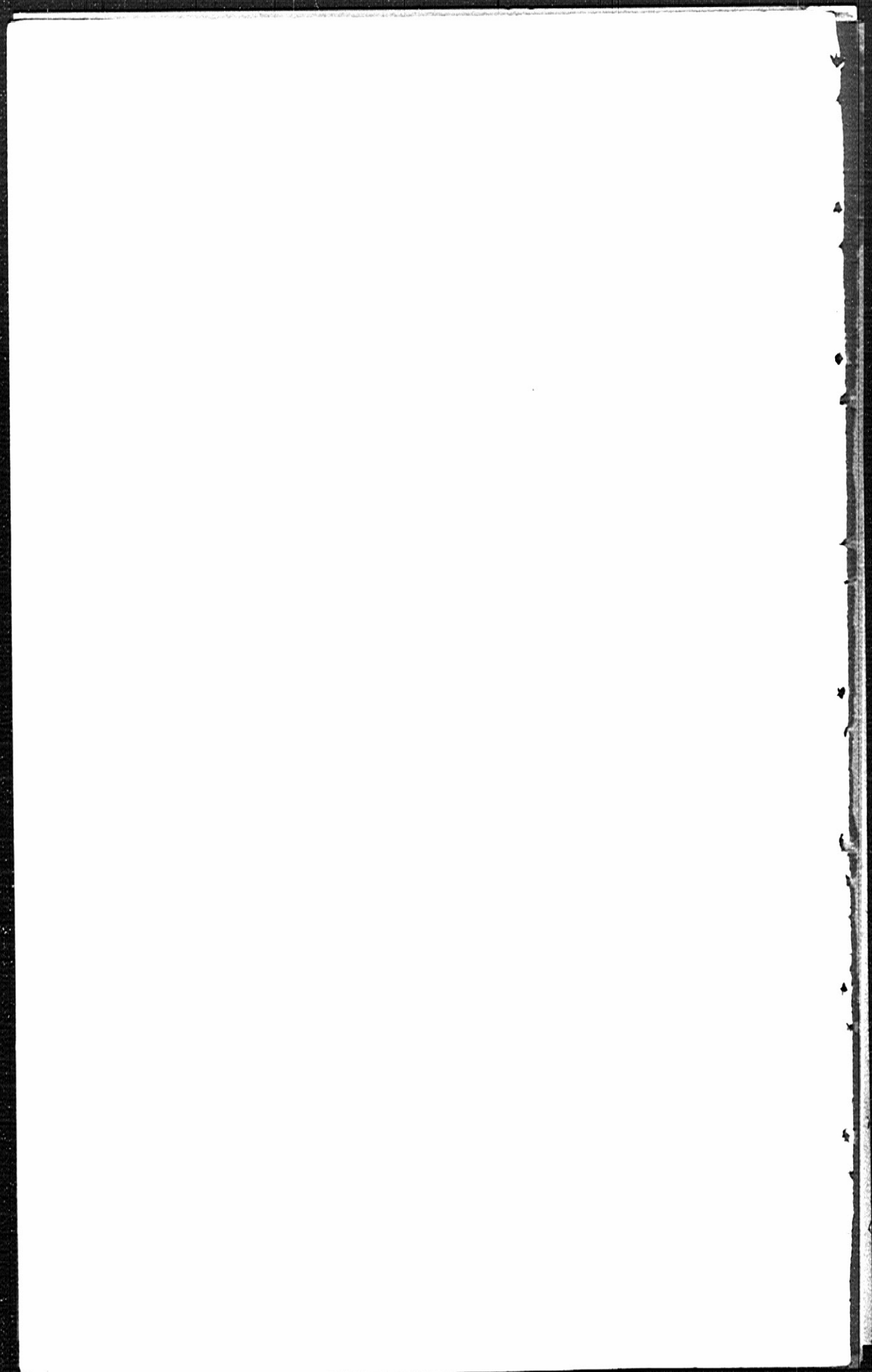
C. C. P.

**PETROLEOS MEXICANOS.
AV. JUAREZ NO. 92.-94.-MEXICO, D.F.**

JFH/gcs

Atentamente
SUFRAGIO EFECTIVO. NO REELECCION
El Director General

Lic. Ernesto R. Ruiz Salazar
Copia sin validez para el Padrón Fiscal
Se anexa documento de autorización



BRIEF FOR RESPONDENT FEDERAL POWER
COMMISSION

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19973

JUAREZ GAS COMPANY, S. A., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
SOUTHERN UNION GAS COMPANY, DEL NORTE
NATURAL GAS COMPANY, INTERVENORS

On Petition to Review Orders of the Federal Power
Commission

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 29 1966

Nathan J. Rosenberg
CLERK

RICHARD A. SOLOMON,
General Counsel,

HOWARD E. WAHRENBROCK,
Solicitor,

PETER H. SCHIFF,
Deputy Solicitor,

WILLIAM H. ARKIN,
*Attorney,
For respondent.*

*Federal Power Commission,
Washington, D.C., 20426.*

August 29, 1966

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Petitioner, a distributor of natural gas in Juarez, Mexico, sought to intervene in Commission proceedings in which the applicants sought permission to export gas for the benefit of a distributing company proposing to sell gas in areas of Juarez not being served by petitioner. In the opinion of the Commission the question presented is:

Whether the Commission may reasonably deny intervention to a person, even though he may be aggrieved, where he seeks to be heard on issues the Commission need not consider.

III

INDEX

	Page
Counterstatement of the question presented	I
Counterstatement of the case	1
Summary of argument.....	8
Argument	9
The Commission reasonably denied petitioner's application for leave to intervene.....	9
Conclusion	17

TABLE OF CITATIONS

Cases:

* <i>Alston Coal Co. v. F.P.C.</i> , 137 F. 2d 740 (CA10) ..	9
<i>American Louisiana Pipe Line Co.</i> , 28 FPC 41	7, 12
<i>Associated Industries of New York State, Inc. v.</i> <i>Ickes</i> , 134 F. 2d 694 (CA2), vacated as moot, 320 U.S. 707	11
<i>Border Pipe Line Co. v. F.P.C.</i> , 84 AppDC 142, 171 F. 2d 149	15
* <i>Central Illinois Public Service Co. v. F.P.C.</i> , 338 F. 2d 682 (CA7)	12
<i>F.C.C. v. Sanders</i> , 309 U.S. 470	11
<i>Mississippi River Fuel Corp.</i> , 9 FPC 198	15
<i>Montana-Dakota Utilities Co.</i> , 8 FPC 409	15
<i>National Coal Association v. F.P.C.</i> , 89 AppDC 135, 191 F. 2d 462	9
<i>Northern Natural Gas Co.</i> , 22 FPC 164	13
* <i>Office of Communication of the United Church of</i> <i>Christ v. F.C.C.</i> , — AppDC —, 359 F. 2d 994	9, 10
<i>Pittsburgh, City of v. F.P.C.</i> , 99 AppDC 113, 237 F. 2d 741	9

* Cases or authorities chiefly relied upon are marked by asterisks.

IV

Cases—Continued	Page
<i>P.S.C. of New York v. F.P.C.</i> , 111 AppDC 153, 295 F. 2d 140	11
<i>Scenic Hudson Preservation Conference v. F.P.C.</i> , 354 F. 2d 608 (CA2), certiorari denied, 384 U.S. 941	9
<i>Scripps-Howard Radio, Inc. v. F.C.C.</i> , 316 U.S. 4	11
<i>Virginia Petroleum Jobbers Ass'n. v. F.P.C.</i> , 104 AppDC 106, 259 F. 2d 921	9
Statutes and Regulations:	
Executive Order No. 10485, 3 C.F.R. 1949-53 Comp. 970	5, 6
Federal Power Commission Rules of Practice and Procedure:	
Section 1.8(a) (2), 18 C.F.R. 1.8(a) (2)	11
Section 1.8(b), 18 C.F.R. 1.8(b)	11
Section 1.8(c), 18 C.F.R. 1.8(c)	11
Section 1.32(b), 18 C.F.R. 1.32(b)	6
Natural Gas Act, June 21, 1938, c. 556, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w	6, 12, 13
Section 3, 15 U.S.C. 717b	4, 6
Section 7(b), 15 U.S.C. 717f(b)	4
Section 7(c), 15 U.S.C. 717f(c)	4
Section 15(a), 15 U.S.C. 717n(a)	9, 11
Section 19(b), 15 U.S.C. 717r(b)	10
Federal Power Commission Regulations under the Natural Gas Act:	
Section 153, 18 C.F.R. 153	4

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19973

JUAREZ GAS COMPANY, S. A., PETITIONER

v.

FEDERAL POWER COMMISSION, RESPONDENT
SOUTHERN UNION GAS COMPANY, DEL NORTE
NATURAL GAS COMPANY, INTERVENORS

On Petition to Review Orders of the Federal Power
Commission

BRIEF FOR THE FEDERAL POWER COMMISSION

COUNTERSTATEMENT OF THE CASE

The petition seeks review of orders of the Federal Power Commission denying intervention in interdependent proceedings which authorized (a) the transmission, sale for resale, and exportation of natural gas to a distributor in the Republic of Mexico and the construction and operation of facilities therefor, and (b) the abandonment of gas transmission service by a former exporter in favor of its successor in interest (R. 300-304; 305-

308, 34 FPC —). Since stays of these orders were denied both by the Commission and this Court, the gas is now being exported under the order challenged.

The proposed project and applications.—The petitioner, Juarez Gas Company, S. A., until the orders complained of herein were issued, was the sole distributor of natural gas in the city of Juarez, Mexico (R. 245). It had been obtaining its entire supply of such gas by importation from Southern Union Gas Company ("Southern") under a 1952 agreement (R. 172-183). Petitioner's distribution services, under its present management since 1935, have been limited to a portion of the city of Juarez (R. 245, 246).

Southern purchased its entire supply of natural gas utilized in its distribution activities in metropolitan El Paso-Juarez from El Paso Natural Gas Company ("El Paso"). Delivery was made to Southern at points of interconnection in southeast El Paso by El Paso Gas Transportation Corporation ("Transportation Company") (R. 20).

The present application involves a project to supply gas to Gas Natural de Juarez, S. A. ("Gas Natural"), a new distributor organized under the laws of the Republic of Mexico, to provide natural gas service in areas of Juarez which were not served by the petitioner. The source of supply was proposed to be El Paso's general supply originating in the Permian Basin (R. 133-134). The actual sales were to be made by Del Norte Natural Gas Company ("Del Norte"), a new company chartered in 1965 (R. 141) which, upon approval of the new exports, was to succeed by assignment from Southern to the latter's contract to sell gas to petitioner.

The applications showed that the projected number of residential, commercial and industrial consumers after three full years of operation of Gas Natural (the new distributor) was estimated to total 12,606, with total annual natural gas requirements in excess of 3,000,000 Mcf. The annual requirements of the petitioner, as of

the same date, were estimated at 388,500 Mcf. (R. 85, 301). The projection of the demand by the new company was based upon a market survey obtained by Del Norte (R. 29-30, 108-109). It was also shown that the fuel used by almost all prospective residential and small commercial customers was liquid petroleum gas which cost 73% more than natural gas proposed to be sold and that because liquid gas was being used, conversion to natural gas by such customers would be less than \$5 per attachment (R. 122). Natural gas was also shown to afford substantial fuel savings to prospective industrial and large commercial customers (R. 122).

Transmission facilities necessary to service the new company were to be constructed by Southern at a cost of \$71,990 and leased to Del Norte. And at each point of delivery to Del Norte, Transportation Company proposed to construct and operate standard orifice-type measuring and regulating stations at a total cost of \$32,100. The cost of the facilities to be installed by Gas Natural in Mexico to provide service for distribution upon completion of the third full year of operation was estimated at \$2,570,500 (R. 25-26, 123-127), of which \$944,000 was to have been expended by the end of 1965 (R. 88).

The projected gross income from the sale and transportation of natural gas by the El Paso companies was estimated at \$892,071 as against incremental costs of services totalling \$5,610 in 1966. The corresponding figures for 1968 are \$1,049,602 and \$5,446 (R. 128). Del Norte's revenues for 1966 were estimated to total \$1,148,185 as against expenses totalling \$1,066,203. The estimates for 1968 (the third year of operation) are respectively \$1,378,780 and \$1,263,699 (R. 89).¹

As a result of a market survey based in part on interviews of residential and commercial users of fuel and

¹ The expenses include projected costs for leasing Southern's facilities of \$93,712 in 1966, \$113,254 in 1967, and \$128,397 in 1968 (R. 89), which average exceeds \$110,000 annually. That figure is in excess of 30% over the minimum required by the lease commitment.

also on applications for service (R. 108), the gross revenue of Gas Natural in 1966 was projected at \$1,442,638 and its total expenses at \$1,339,991. The 1968 figures are respectively \$1,867,253 and \$1,690,653 (R. 109).

Approval of the plan which in essence meant the substitution of Del Norte for Southern as exporter of natural gas to the petitioner and the enlargement of facilities and increased sales for exportation of gas to accommodate the new distribution system was sought by the filing of four applications:

(1) A joint application by El Paso and Transportation Company wherein El Paso sought permission and approval under Section 7(b) of the Act to abandon the sale and delivery of natural gas made by it to Southern for export and resale to petitioner, and a certificate of public convenience and necessity under Section 7(c) authorizing the sale and delivery of natural gas by it to Del Norte for export and resale to petitioner and to Gas Natural, and wherein Transportation Company sought permission and approval under Section 7(b) to abandon the transportation of natural gas made by it for the account of Southern, and a certificate of public convenience and necessity under Section 7(c) authorizing the construction and operation of certain facilities by it and the transportation for Del Norte's account of such natural gas as Del Norte purchases and receives from El Paso for export and resale to petitioner and to the new distributing company (Docket No. CP66-105; R. 15-131);

(2) Del Norte's application pursuant to Section 3 of the Act and Part 153 of the Commission's Regulations for an order authorizing it to export natural gas from the United States to the Republic of Mexico (Docket No. CP66-104; R. 132-185);²

² The joint application contains a copy of the agreement between El Paso and Del Norte for the sale and purchase of natural gas sufficient to supply specified maximum daily deliveries to petitioner and Gas Natural (R. 90-100) and of Del Norte's agreement with Transportation Company for transportation thereof (R. 101-

(3) Del Norte's application for a presidential permit to operate and maintain facilities at the border of the United States for the exportation of natural gas from the State of Texas to the Republic of Mexico in accordance with Executive Order No. 10485 (Docket No. CP66-106; R. 186-229);³ and (4) Southern's application filed under Docket G-513 for vacation of the presidential permit and authorization for exportation of gas into Mexico previously granted it (R. 230-235).

Petition for Intervention.—Juarez Gas filed its petition to intervene on November 5, 1965, alleging, *inter alia*, that the granting of the applications would enable a new distribution company, Gas Natural, to invade its franchise territory, that Gas Natural was a purely paper company without experience in management and operation of a natural gas distribution system, that no attempt was made to show it could receive and dispose of the natural gas proposed to be exported, that Gas Natural had not and that it was highly improbable that it would be able to procure necessary local consents required to operate a distribution system in the City of Juarez and that it had not demonstrated capability, much less probability, of economic and financial ability to secure import authorization under Mexican law.

In answer to petitioner's claims in this petition to intervene, Del Norte, on November 18, 1965, filed a supplement to its application for authorization to export natural gas and to its application for a Presidential Permit (R. 259-291). This included copies of original letters and translations relied upon as demonstrating necessary local approval for the installation of a natural gas distribution system, delineation of the proposed zones of operation, evidences of completion of construction of

107). Del Norte's application contains a copy of the agreement for sale and delivery of gas to Gas Natural (R. 160-185).

³ The permit application includes a copy of Del Norte's lease of facilities from Southern of existing and contemplated facilities. The agreements were subject to requisite governmental approval.

such a system in certain of said zones, and approval of said installations.

The Commission on December 29, 1965, denied petitioner's petition to intervene and under the shortened procedure rule⁴ issued two orders, one of which authorized exportation by Del Norte through facilities leased from Southern and terminated the authorization to export theretofore issued to Southern (R. 300-304). The other order provided for issuance to El Paso and Transportation Company of a certificate of public convenience and necessity authorizing the applicants to construct and operate the facilities and to sell and transport natural gas in the manner for which approval was sought, and authorized abandonment of the transportation of natural gas for Southern (R. 305-308). A permit authorizing exportation of natural gas by Del Norte pursuant to Executive Order No. 10485, 3 CFR (1949-53) Comp. 970, and revoking the permit to Southern, was issued under date of December 28, 1965 (R. 309-316).

In denying petitioner permission to intervene the Commission explained (R. 301-302):

* * * Juarez Gas contends that it is not consistent with the public interest to authorize the exportation of natural gas under Section 3 of the Act for the purpose of enabling a new and second distribution company to invade the franchise territory of an existing supplier. The Commission cannot assume the obligation of determining local franchise rights in Mexico. It is not the purpose of regulation under the Natural Gas Act to deal with franchise rights relating to the distribution of natural gas in foreign countries. In fact, we have held that it is not within the Commission's province to determine which of two distributors in the United States has the legal right to distribute natural gas in a commu-

⁴ Statutory hearing under § 1.32(b) of the Commission's Rules of Practice and Procedure which permits disposition of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record.

nity within a state where the issue has been raised. We have left the resolution of such controversies to the appropriate authorities of the state where the parties operate. See *American Louisiana Pipe Line Company, et al.*, Docket No. G-2306, *et al.* (28 FPC 41).

Juarez Gas alleges that Gas Natural is a "purely paper company", that the applications make no showing that Gas Natural will be able to dispose of the gas exported by Applicant, that it is probable that Gas Natural will not be able to secure all of the federal, state and municipal authorizations to distribute gas, and that the import authorization will be denied. Exhibits to the application filed in Docket No. CP66-105 indicate that Gas Natural has already begun construction of its distribution system under appropriate Mexican authorizations. The supplement filed November 18, 1965, to Applicant's applications indicates that some of the construction has been completed and that various authorizations have been received to undertake more construction. These are matters within the jurisdiction of the appropriate Mexican authorities and this Commission will not review them. The authorization issued to Applicant is conditioned upon the receipt of appropriate import authorization and is without prejudice to any action taken by any authority in Mexico.

The Federal Power Commission is not the proper forum in which Juarez Gas can receive relief from the alleged detriments to it occasioned by the distribution of natural gas by Gas Natural. This is, in essence, what Juarez Gas is seeking by its request to participate in these proceedings. Any determinations made by Mexican authorities having jurisdiction over such matters will be accepted by this Commission. Juarez Gas has failed to demonstrate that it has any interest in the subject applications which this Commission can consider, and it has failed to show any other reasons why it should be permitted to participate. Accordingly, the petition will be denied in each docket in which it is filed.

Petitioner timely filed its application for rehearing⁵ (R. 324-392) and for a stay (R. 318-323) on January 14, 1966. Both of these were denied by the Commission on February 1, 1966 (R. 419-420), the Commission noting that no new facts or principles of law had been alleged by petitioner indicating that it erred in denying intervention or in issuing the challenged orders or export permit (R. 419-420). The petition for review followed together with a motion requesting a stay from this Court. The stay was denied, without oral argument, by order dated March 15, 1966.

SUMMARY OF ARGUMENT

A person claiming a right to intervene in a Commission proceeding must not only show that he might be aggrieved but also that the issues on which he seeks to be heard are ones that the Commission should consider. The "right" of a person aggrieved to intervene as a private attorney general is intended to protect the public interest. Thus, agencies have the authority to limit intervention to those persons who show affirmatively that their participation will further the public interest. We show that Juarez' petition did not do so but indicated instead that its principal position would be that the proposed new gas distributor would be unable to obtain requisite Mexican authorizations. The Commission reasonably concluded that it should not resolve disputes with respect to Mexican authorizations. Since no

⁵ The rehearing application is lengthy and repetitive. The exhibits attached thereto disclosed for the first time the basis of petitioner's allegedly "factual" claims. These, in principal part consist of reprints of newspaper articles covering speculation as to the rates under which Gas Natural might be permitted to operate (R. 367-369, 379-381) and requirements for approval (R. 379-381); the suspension of installation of pipes pending approval by sanitation officials (R. 364-365) and the authority therefore (R. 375-378); and an affidavit by a representative of petitioner verifying the fact of interconnection at the international boundary prior to the issuance by the Commission of the orders complained of (R. 382-392).

other substantial issue was raised, intervention was properly denied.

ARGUMENT

The Commission Reasonably Denied Petitioner's Application for Leave to Intervene

Petitioner's basic claim is that it had a right to intervene under this Court's decisions in *Virginia Petroleum Jobbers Association v. F.P.C.*, 104 AppDC 106, 259 F. 2d 921; *National Coal Association v. F.P.C.*, 89 AppDC 135, 191 F. 2d 462; and *City of Pittsburgh v. F.P.C.*, 99 AppDC 113, 237 F. 2d 741, because Gas Natural is its potential competitor and hence it might be aggrieved by a grant of the export permit. In making this argument, petitioner fails to recognize (1) that a mere showing of possible aggrievement does not give it a right to intervene unless it also demonstrates to the Commission, in the application to intervene, that the issues on which it seeks to be heard are issues that the Commission properly should consider (see, e.g., *Alston Coal Co. v. F.P.C.*, 137 F. 2d 740 (CA10); see also, *Office of Communication of the United Church of Christ v. F.C.C.*, AppDC , 359 F. 2d 994, 1005; *Scenic Hudson Preservation Conference v. F.P.C.*, 354 F. 2d 608, 617 (CA2), certiorari denied, 384 U.S. 941, and (2) that its failure to make such a showing was the Commission's basis for not permitting it to intervene.⁶

The undoubted breadth of the scope of the concept of "aggrievement" which underlies much of the decisional law on intervention in administrative agency proceedings is not dispositive of these questions. This Court has held that even though Section 15(a) of the Gas Act vests in the Commission discretion to permit or refuse

⁶ We note that inconsistently with its basic contention petitioner recognizes (Br. p. 16) that the Commission "has never held that Petitioner does not have an interest in the interdependent Applications which would be adversely affected by an order approving the several proposals."

to permit intervention, that discretion would be susceptible to abuse if a person who would be aggrieved by a decision contrary to his claims were denied intervention. It reasoned that "aggrievement" as a criterion of judicial reviewability under Section 19(b) of the Gas Act would be thwarted if such a person were denied intervention since only parties to Commission proceedings are entitled to seek review. But, despite the breadth of these decisions, this Court has also made it equally clear that the aggrievement criterion of Section 19(b) was intended to protect public, rather than private, interests and that application of the same criterion for determining the "right" to intervene was also in furtherance of the protection of public interest. Agencies have the authority to prevent abuse in interventions by limiting the interventions of even "aggrieved" persons to those who demonstrate that their participation will further the public interest (*United Church of Christ* case, *supra*, 359 F. 2d at 1005-1006):

The [Communications] Commission should be accorded broad discretion in establishing and applying rules for such public participation * * *.

* * * *

We are aware that there may be efforts to exploit the enlargement of intervention, including spurious petitions from private interests * * * since such private interests may sometimes cloak themselves with a semblance of public interest advocates. But this problem, as we have noted, can be dealt with by the Commission under its inherent powers and by rulemaking.

This restriction on the "right" to intervene even by persons who may show aggrievement necessarily follows from the reason for according persons aggrieved standing even though they have no legally protectible interest. The practice of permitting such a person to participate in administrative proceedings as a "private attorney general" arises out of the view that a person who may

in fact be injured by administrative action may be the one most likely to lend substantial assistance to an administrative tribunal determining the public interest with respect to private applications. See *Scripps-Howard Radio, Inc. v. F.C.C.*, 316 U.S. 4; *F.C.C. v. Sanders*, 309 U.S. 470; *Associated Industries of New York State, Inc. v. Ickes*, 134 F.2d 694, 703 (CA2), vacated as moot, 320 U.S. 707. This purpose would not, of course, be fulfilled if persons though aggrieved, could indiscriminately use the administrative forum for delay by raising issues not appropriate for administrative decision.

Intelligent application of the intervention procedure necessarily requires a determination by the administrative agency of the nature of the aid to be rendered in the solution of a question involving the public interest and this in turn depends upon disclosure in an application for leave to intervene. In this respect the Commission's regulations,⁷ require all persons, other than State Commissions, seeking permission to intervene to file intervention petitions containing such information. Specifically, the regulations (Section 1.8(c)) provide that:

* * * Petitions to intervene shall set out clearly and concisely the facts from which the nature of the petitioner's alleged right or interest can be determined, the grounds of the proposed intervention,

⁷ Section 1.8(c) of the Commission's Rules of Practice and Procedure. This Court in *Public Service Commission of New York v. F.P.C.*, 111 AppDC 153, 157, 295 F. 2d 140, recognized the purpose of the Commission in adopting a procedure permitting automatic intervention in some cases and intervention by petition in others, stating at p. 144:

The essence of the matter is that under the present rules the interest of a State Commission in intervening is shown when it files a notice of intervention, whereas the interest of a non-public entity must be established on petition to the Commission for permission to intervene under the procedures of sections 1.8(a)(2) and 1.8(b), eventuating in an order of the Commission. * * *

Section 15(a) of the Act specifically authorizes the issuance of regulations with respect to interventions.

and the position of the petitioner in the proceeding, so as fully and completely to advise the parties and the Commission as to the specific issues of fact or law to be raised or controverted, by admitting, denying or otherwise answering, specifically and in detail, each material allegation of fact or law asserted in the proceeding, and citing by appropriate reference the statutory provisions or other authority relied on * * *.

A reading of Juarez's petition to intervene (R. 245-251) in the light of these requirements brings its position into clear focus. It is devoted in large part to demonstrating Juarez' interests, specifically that it has been the sole distributor in the City of Juarez for years, that it plans to expand its activities,⁸ and that the granting of the applications enabling the new company, a potential competitor, to obtain gas would adversely affect it. It then urges (R. 248) that the export permit (and related applications) should be denied as not consistent with the public interest *because it would enable the new company to invade the franchise territory of an existing supplier and lead to ominous competition "which it is the purpose of regulation to prevent."* (Emphasis added)

The Commission was plainly correct in concluding that, to the contrary, it was not the Commission's function under the Gas Act to resolve disputes with respect to local franchises in another country. Indeed, the resolution of local franchise disputes even within the United States has been left for determination by appropriate authorities in the state of operation, with judicial approval. In *Central Illinois Public Service Co. v. F.P.C.*, 338 F. 2d 682 (CA7), approving the principle enunciated in *American Louisiana Pipe Line Co.*, 28 FPC 41, to which the Commission pointed here (R. 302), the Seventh Circuit stated (338 F. 2d at 687):

⁸ The record shows that petitioner has been in existence since 1902 and has been operating under its present management since 1935. It has been serving only one portion of the City of Juarez during that time.

In passing the Natural Gas Act, Congress took care not to intrude unnecessarily upon state prerogatives. It seems clear that Congress did not intend the Commission to act as a local forum on matters over which it had no regulatory jurisdiction.^[9]

There the court determined that the Commission properly left to the State courts the question whether a municipality would be able to operate its system in accordance with the plan finally presented to the Commission. *A fortiori*, matters concerning the legality of the operations of a distribution system in Mexico over which Congress could have no jurisdiction are not proper subjects of regulation under the Gas Act.

The focus of the petition to intervene is confirmed in its further allegation that the new company was a "purely paper company" with no experience in gas distribution (R. 248), that no showing had been made that the gas (15,000 Mcf per day) proposed to be exported could be used and hence that related facilities in the United States needed for export had not been supported. Since the applications contained detailed information with respect to Del Norte's and Gas Natural's proposed market and the basis for the market estimates (see *supra*, pp. 3-4, R. 85-89, 108-109, 122), which the petition to intervene did not question, the basis for its allegation that no showing had been made of Gas Natural's ability to use the gas sought to be imported necessarily depended on its further assertions that, on information and belief, Gas Natural had not received all the requisite Mexican authorization for its new distribution project and that it believed receipt of such approval was highly improbable (R. 249). The Commission, in denying the intervention, quite properly pointed out that far from being a paper company, Gas Natural had already constructed part of its distribution system under Mexican authorizations¹⁰ and that, in any event,

⁹ To the same effect see, *Northern Natural Gas Co.*, 22 FPC 164, 175-176.

¹⁰ The record discloses that legal consents or approvals were obtained from the municipal authorities of Juarez for the installation

the receipt of all authorizations for construction and operation of the distribution system was within the jurisdiction of appropriate Mexican authorities and would not be reviewed by the Commission.¹¹

Gas Natural's new distribution system and the various related applications obviously depended upon whether Gas Natural would receive requisite Mexican authorizations and hence the Commission conditioned the export permit upon receipt of all necessary Mexican authorization. While the possibility that the necessary authorization might not be obtained left open the contingency that none of the proposed projects would be feasible, this fact did not make

of a natural gas distributing system in the zones of the city then not presently served by the existing company (R. 112); from the State government (R. 116); from the Secretariat of Industry and Commerce relative to the commencement of construction in eleven zones (R. 120-121, 271-272) and final approval of construction in Zone No. 1 (R. 274); from the Sub Secretary of Land and Urban Development, General Direction of Federal Board of Material Developments regarding import and distribution of natural gas from the United States into the City of Juarez for industrial purposes (R. 277); from Petroleros Mexicanos regarding importation and distribution (R. 279); from the Secretary of Industry and Commerce certifying that Gas Natural has the technical ability to finish the construction of the distribution system (R. 282), and from the Sanitary Engineering Department regarding the approval of installation (R. 418-A).

¹¹ Petitioner's present claim (Br. pp. 35-36) of lack of financial feasibility is predicated in part upon the presumption that the Mexican authorities will, after having authorized large expenditures for the installation of a gas distribution system, impose a confiscatory rate schedule upon the new company. The Commission was certainly not required to assume that Mexican authorities would act in such an arbitrary manner.

A substantial part of Gas Natural's investment in construction, *supra*, page 3, was to have been expended in 1965. While the amount actually spent is not evidenced, it would appear to have been considerable. Letters of the National Chamber of Commerce of Juarez and the National Chamber of Industry of Transformation both dated in November, 1965, state the new company had installed 3,200 service "openings" (R. 286, 291).

it appropriate for the Commission to attempt to resolve matters of local Mexican law or warrant petitioner's participation with respect to questions the Commission appropriately declined to consider.

While, as we have noted, the petition to intervene principally objected to the project on the grounds that were properly for Mexican decision, it also asserted that assignment of the contract between Southern Union and Juarez Gas to Del Norte had not been shown to be consistent with the public interest and similarly that no justification had been provided for the construction of facilities by Southern Union and the leasing thereof to Del Norte under a contract providing for a minimum annual charge. Aside from the bare conclusion that this part of the arrangement has not been justified, petitioner did not suggest, nor does it now, in what manner the assignment would be detrimental to the public interest. In its brief, petitioner asserts in effect that construction-lease arrangements had previously been considered suspect by the Commission, citing *Mississippi River Fuel Corp.*, 9 FPC 198, and *Montana-Dakota Utilities Co.*, 8 FPC 409, and that therefore any such arrangement is suspect. But petitioner fails to recognize that the reason the Commission questioned the leasing arrangements in those cases was that they might impair the Commission's ability effectively to exercise its continuing rate jurisdiction over the jurisdictional pipeline companies proposing to have the facilities constructed by a non-jurisdictional company. This type of impairment of the exercise of Commission jurisdiction cannot, however, result from the leasing arrangement here. Neither Southern Union nor Del Norte, which proposed to lease the facilities, is or has been subject to Commission rate jurisdiction with respect to the sales to the Mexican distributing company because export sales are not subject to such control. See *Border Pipe Line Co. v. F.P.C.*, 84 AppDC 142, 171 F. 2d 149. Since the leasing arrangement could not infringe upon Commission jurisdiction, the naked assertion in the

petition to intervene that the lease arrangement had not been justified here did not warrant Juarez Gas' participation as an intervenor absent some indication how the public interest might, in the present circumstances, be harmed.¹² Indeed, petitioner still has given no such indication. We also note that as to the assignment of the contract as such, petitioner has no valid ground for complaint since by its very terms it is assignable (R. 181) and the rights and obligations of the original parties thereunder were not affected by the assignment.¹³

¹² Petitioner's criticism of the minimum rental was insubstantial since the minimum annual rental of \$84,000 was to be substantially exceeded even in the first year of operation when the lease cost was estimated at more than \$93,000 (R. 89). By the third year the lease cost would exceed the minimum by more than 30%. It should also be noted that petitioner did not even question the terms of the lease arrangement, aside from the minimum rental.

¹³ We have no occasion to discuss petitioner's challenge (Br. pp. 29-38) of the merits of the Commission's order. For, as petitioner points out (Br. p. 29), it can only raise these issues if it was improperly denied intervention. However, if contrary to our view, the denial of intervention were improper the case would in any event be remanded for further proceedings.

CONCLUSION

For these reasons, the orders of the Commission denying petitioner intervention should be affirmed.

Respectfully submitted,

RICHARD A. SOLOMON,
General Counsel,

HOWARD E. WAHRENBROCK,
Solicitor,

PETER H. SCHIFF,
Deputy Solicitor,

WILLIAM H. ARKIN,
*Attorney,
For respondent.*

*Federal Power Commission,
Washington, D.C., 20426.*

August 29, 1966